THE MEDICAL COUNCIL

—

CASES

CONFIDENTIAL.]

CASES

RELATING TO

THE MEDICAL COUNCIL.

For the use of Members of the General Medical Council only.

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PREFACE.

I AM indebted to the Editors of the "Law Journal," the "Law Times," and the "Times Law Reports" for their courtesy in permitting me to make use of the reports of the following cases, which have appeared in their respective publications. Where I have added anything to these reports the addition has been taken from the shorthand notes of the case in my possession. For example, in *Partridge's Case*, I have set out *in extenso* the observations of the Master of the Rolls, in which he indicates the form in which an inquiry should be conducted by the Council. I have also occasionally taken the history of the cases in which the Council has appeared from the Council's records instead of taking it from the reports.

I would call the attention of members of the Council to the fact that the jurisdiction of the Council has been recognized, and its procedure approved, by both the Common Law and the Chancery Divisions of the High Court of Justice, *e.g.*, *Allbutt's* and *Leeson's Cases*, pp. 33, 41.

In several of the cases, notably those of *Partridge*, *Allbutt*, and *Leeson*, the judges comment on the necessity of what they term "natural justice." They pronounce that, according to natural justice, the judge must not also be the prosecutor, nor must he in any case which comes before him have an interest which can reasonably be suspected of biassing his judgment. Due inquiry must be held, at which the accused person must have the opportunity of being heard, and some reasonable evidence of the truth of the charge must be produced at such inquiry.

In *Allbutt's Case*, it is true, the inquiry was made by the Council, but in that case the publication of the book on which the charge of misconduct was found was admitted and justified, and the solicitor took care to point out that he made no charge against the defendant, but simply submitted the

facts for the Council's consideration. At the same time, it is always most desirable that complaints should not be initiated and conducted by the Council, and no member of the Council should be a subscriber to, a member of, or in any way connected with those associations who make it their business to discover and bring before the Medical Council practitioners charged with irregularities.

A very important point was decided in *Allbutt's Case*, viz., that the publication of the Council's minutes, if made in good faith and without improper motive, was privileged.

Leeson's Case, a leading one on the subject of bias in a judge, shows how very closely the Court scrutinises any suspicions of this kind,—a scrutiny that is emphasized by the dissent of Fry, L.J., from the judgment in *Leeson's Case*, and the observations of Lord Davey, L.J., in *Allinson's Case*.

Ellis v. *Kelly*, *Styrap* v. *Andrews*, and *Regina* v. *Baker* (*Smith's Case*) show that a registered practitioner who assumes titles implying qualifications for registration other than those he possesses, commits an offence under sect. 40 of the Medical Act, 1858.

La Mert's Case, confirmed by those of *Leeson*, *Allbutt*, and *Allinson*, shows that the Council are the sole judges of professional misconduct in a registered practitioner, and *Partridge's Case* shows that the same rule applies to registered dentists. The great importance, however, of *Partridge's Case* consists in the fact that under it the Council have the power of supervising, as it were, the sentences passed by the Licensing Bodies, for the Council alone can take a practitioner's name from the register, and they need not necessarily do so, though all the qualifications by which he obtained registration may have been withdrawn by the bodies which originally gave them to him.

FREDK. WILLIS FARRER.

66, Lincoln's Inn Fields, London, W.C.
June, 1897.

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CASES

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THE MEDICAL COUNCIL.

21*st Jan.* 1861.

RICHARD ORGAN had obtained registration in 1859 by certain representations which the Council afterwards discovered to be untrue. His name was removed from the Register by the Council without hearing him. He obtained in Easter Term, 1860, a mandamus, on the ground that he had not been heard. The Council restored his name, and on 29th May, 1860, gave him notice of their intention to inquire into his conduct. He applied to be heard by counsel, but his application was refused. The Meeting of the Council was held 18th June, 1860. Organ attended with his attorney, who protested but declined to interfere. The Council found Organ guilty, and directed his name to be erased from the Register.

Minutes, Vol. I., p. 104. 30 Law Journal, Queen's Bench Cases, 201. The 26th section of the Medical Act, enacting that any entry which shall be proved to have been fraudulently or incorrectly made may be erased from the Register by order in writing of theCouncil, applies to registrations made under the dispensing power given by sect. 40 as well as to ordinary registrations under sect. 15.

Counsel for the Medical Council showed cause. The Council had jurisdiction under sect. 29, although the misconduct took place before registration. The adjudication only need be after registration. If a conviction takes place after registration the Council would have jurisdiction, and the same construction must apply to the adjudication by the Council, which is tantamount to a conviction.

CROMPTON, J. Sub-sect. 15 seems to give a right to a person showing certain qualifications to call on the Registrar to insert his name. It does not seem that he could exercise any discretion and refuse to insert an infamous person if qualified. It was therefore necessary to give this power to the Council.

Hayes, *Serjeant*, in support of the rule. The Council ought to have stated specific charges. The 15th section gives an absolute right to all persons duly qualified to be placed on the Register.

This affords a strong argument that nothing that has taken place before that should have any effect.

CROMPTON, J. It may well not be considered right to give any discretion to the Registrar alone.

Hayes. This is a restrictive act and takes away a pre-existing right, and must therefore be construed strictly.

CROMPTON, J. It is a protective act, and was intended to interfere in a qualified manner with vested rights.

Hayes, Serjeant, argued that the section had reference to acts committed after registration, and that sect. 26 did not apply to a person registered under sect. 26, but came only by way of appeal from the Registrar. That sect. 29 was the first section that gave primary jurisdiction to the Council.

HILL, J. The latter clause of the 26th section is not by way of appeal even if it extends only to registration by the Registrar. It applies to a case where the Registrar has not decided anything, but has been deceived or incorrectly informed.

CROMPTON, J. It being discretionary with the Court to grant a mandamus in such a case as the present, I am of opinion that this rule ought to be discharged. But apart from the merits, I am of opinion that the General Council acted perfectly legally, and that they have properly decided the applicant's case under the 26th section, which I think is applicable to it. It has been said that the Council ought to find the specific charges when the facts are disputed, but in the present case a mandamus was granted by this Court to enable the applicant to obtain a hearing, and when facts were *primâ facie* proved against him in his presence he asks to be heard by counsel, which the Council in their discretion refuse, but he declines to adduce any evidence in reply. I cannot, therefore, say that there is sufficient doubt as to the facts to induce us to call upon the Council for a return. I think the finding of the Council is sufficient and binding upon us if they had, as I think they had, power to adjudicate under the circumstances, and that we have no right to interfere. By sect. 15 a right is given to persons possessing certain qualifications to be registered on application or on the mere sending in of their diplomas. [*The learned judge then read the 26th section.*] It is quite clear that this removal may take place on the application of a third party, but it is said that the fraud must be either

by or upon the Registrar, and that, inasmuch as the present registration was by the Council and not by the Registrar, the 26th section does not apply. But I do not think its operation is to be confined to cases of registration under the 15th section. If it were to be so confined, sects. 29 and 39 (2) must be similarly confined, and would only apply to cases where the offender had been registered under sect. 15. But by sect. 46 another means of registration is given, namely, by application to the Council for the exercise of their dispensing power; and looking at the whole scheme of the Act, I see no reason why the registration under this 46th section should be excluded from the operation of those other sections, the language used in them being quite general. I am also of opinion that the case comes within the operation of the 29th section. It is said that to hold this would be to make the Act retrospective, and, so far as it applies to persons who, before the Act, were entitled to practise, it is. The phrase, "shall be judged," taken by itself, might admit of doubt, but the time pointed out in each case is the time of conviction or the time of adjudication, and not the time of committing the offence.

Hill, J. On the first point, that the case comes within the 26th section, I entirely agree with my brother Crompton, and that the granting of a mandamus is to a certain extent discretionary with the Court. But even if the law were not so, I am clearly of opinion that we ought not to interfere on the present occasion. The facts are, that some time ago Mr. Organ, having procured himself to be registered under the 46th section, and having been removed without a hearing from the Register, obtained a rule for a mandamus to the General Council to restore him. This amounted in fact to a mandamus to the Council to hear him, and accordingly they immediately restored him in obedience to the rule of this Court, and then called upon him to answer certain specific charges. He asked to be heard by counsel, which the Council refused, as they had a right to do, and he attended according to the notice, and on hearing the evidence on the specific charges against him, declined to give any evidence to rebut them, and disputed the jurisdiction of the Council to act either under the 26th or 29th section. The Council found that the charge that he had obtained his registration fraudulently was proved, and they ordered his name to be

removed accordingly. This they had a perfect right to do if the case falls within the 26th section. The Council also find that he had been guilty of infamous conduct, and remove his name under the 29th section also. I am of opinion that the case falls within the latter clause of the 26th section. The 15th section gives a right to all persons possessing certain qualifications to be placed on the Register, and to call on the Registrar to place them there. Sect. 17 entitles all persons practising medicine before 1815 to the same advantage. Sect. 46 contains a dispensing power by which the General Council are enabled by special orders to dispense with the provisions and regulations under the Act in favour of certain classes of practitioners. The present applicant applied, and was admitted by the Council under the 46th section, and it has been argued on his behalf that the 26th section does not apply to a person admitted under the 46th section, but only where the person has been admitted by the Registrar. I think that the last clause in the 26th section must be read in conjunction with the 39th section, sub-sect. (2), which is quite general, and must apply to a man whether he be registered under the 46th or under the 15th or 17th section. And the plain language of the latter part of the 26th section therefore applies to any case in which the registration has been obtained by fraud, or otherwise incorrectly made, whether by the Registrar or Council. I am also of opinion that the 29th section applies to the present case if a conviction takes place after registration, although for an offence committed before; the case is equally within the clause as if the guilty act had also taken place after registration, and in like manner the section applies to a case where the adjudication takes place after registration, although the infamous conduct occurred before. It is not absolutely necessary to decide this latter point in the present case, the first being sufficient to dispose of it, but I think it right not to withhold my opinion on the second point, entertaining it so strongly as I do.

Rule discharged with costs.

14*th Nov.* 1860.

ELLIS, Appellant; KELLY, Respondent.

30 Law Journal, Magistrates' Cases, 35.

Assumption of title. Doctor of Medicine under sect. 40. The offence of wilfully and falsely pretending to be, or taking or using the name or title of a physician, &c., is not established by the mere fact of a wrongful assumption of the title if it appears to have been done under a supposed right. A surgeon on the Register had, prior to the Act, obtained an M.D. diploma from a German University, and had practised under the title of M.D. On production of this diploma, the justices dismissed the information. The Court held they had done so rightly. *Per* Bramwell, B.—"The wilful and false assumption of the title, Doctor of Medicine, by a person duly registered as a surgeon, is an offence within the Medical Act.

Case from Petty Sessions.—This was an information, preferred by the appellant, against Hubert Edmond Charles Kelly, of Pinner, in the county of Middlesex, surgeon, for having on the 2nd November last, at Pinner, in the said county, wilfully and falsely pretended to be and taking and using the name or title of a doctor of medicine, thereby implying that he was so registered under the Act 21 & 22 Vict. c. 90.

On the hearing it was proved, first, that the defendant had for years past, and on the day named in the information, a brass plate affixed on the outer gate of his residence, on which was "Dr. Kelly." The appellant put in evidence a published copy of the last Medical Register, in which his name appears as follows:—"Kelly, Hubert Edmond Charles, Pinner, Middlesex, Mem. Royal Coll. of Surgeons, England, 1856; Lic. Soc. Apoth. Lond., 1856." A witness stated that he had heard the respondent call himself Dr. Kelly.

For the defence, a document purporting to be a diploma of the University of Erlangen, in Bavaria, was put in, and some evidence in support of its genuineness was given.

The complainant contended that the diploma put in by the defendant was not legally proved to be authentic and genuine, nor the person named in it shown to be the defendant, and that the same might have been proved if the defendant had left the document at the registration office, when the Council would, through the Dean of Faculty at Erlangen, have ascertained the fact of its being genuine or not; and that even if these facts had been duly proved, the defendant, not being registered as qualified by that diploma to practise as a doctor of medicine, had committed the offence charged in this information by having the title of "doctor" on his brass plate in front of his house. And also that the possession of such foreign diploma did not entitle the defendant to use the title of doctor of medicine in this country without being liable to the penalty imposed by the 40th section of 21 & 22 Vict. c. 90.

The defendant, by counsel, urged, first, that even without the diploma there was no evidence of the title being used wilfully and with false pretence; secondly, that the mere use of the title

could not necessarily imply that he was registered in the words of the information; thirdly, that the diploma and evidence respecting it were abundant to show that there was no wilful false pretence; that the diploma was conclusive evidence of his being qualified to use the title of "M.D.," either in this or any foreign country; that there was no evidence of his having practised as an M.D.; and that, being registered as a surgeon and apothecary, it was not compulsory on him to register as "M.D.;" and that, being possessed of this diploma, he could not be convicted of falsely pretending to be or using the title of M.D. within the purview of the statute creating the offence.

The justices dismissed the information with costs against the complainant, being of opinion that it was proved the defendant had practised in Pinner as a medical man assuming the title of doctor of medicine, and that he was not registered in the Medical Register as a doctor of medicine; that the document produced before them as purporting to be a diploma from the University of Erlangen was not proved; that the possession of that document so far justified the defendant in assuming the title of doctor of medicine that he could not be said to have assumed such title wilfully and falsely within the meaning of sect. 40 of the Medical Registration Act; but they were of opinion also that the Act does prohibit the use in England of the title of doctor of medicine obtained by virtue of any foreign diploma, unless the same is registered according to the provisions of the Act.

The opinion of the Court of Exchequer was requested, first, whether the Medical Registration Act (21 & 22 Vict. c. 90) prohibits the taking and using of the title of doctor of medicine by any medical man in England, unless the said title be duly registered according to the provisions of the Act; secondly, whether, if the Court should be of opinion that the Act does prohibit the assuming of such title, the defendant, under the circumstances, can be held to have so done wilfully and falsely within the meaning of the 40th section.

If the opinion of the Court should be in the negative on either question, then the judgment was to be confirmed. But if the opinion of the Court should be in the affirmative on both

questions, then the case was to be remitted to the justices for further consideration.

The mode of procedure was then settled,—*i.e.*, that the party on whom lies the burden of proof should begin. (See *Jones* v. *Taylor*, 28 Law J. Reports, N.S. M. C. 20.)

Pollock, C.B. I am of opinion that the respondent is entitled to the judgment of the Court. It is beyond doubt that for many years previous to the Medical Act he was called or had assumed the title of "doctor," which, as he practised medicine and surgery, must be taken to mean "doctor of medicine." The real question in the case is, whether there was any reasonable evidence that the respondent wilfully and falsely called himself or pretended to be what he was not. I think that there was no such evidence.

Bramwell, B. I am of the same opinion; and I may observe, in passing, that we have in this case an illustration of the reasonableness of putting the burthen of the argument on the party who has to establish his case affirmatively. The question depends upon the construction of sect. 40 of the Medical Act. That section is intended to protect the public from being imposed on by persons untruly representing themselves as legally qualified medical men. It appears to me that on the true construction of that section, if any person wilfully and falsely called himself a doctor of medicine, he would be liable to a penalty, although he was, in reality, a member of the College of Surgeons or of the Apothecaries' Company, and was so registered. Sect. 30, I may observe, is confirmatory of that view, for that section empowers any registered person, upon acquiring any higher qualification, to have that subsequent qualification inserted in the Register in substitution or in addition to the qualification previously registered. Assuming that the respondent was not, in fact, a doctor of medicine, the question is, whether he has assumed the title "wilfully and falsely," for the statute does not impose the penalty for mere "incorrectness." Now "wilfully" cannot here mean merely "intentionally" as opposed to "accidentally" (which is the meaning it sometimes has), for a man cannot accidentally call himself a doctor of medicine; and, therefore, the section must be read as pointing to wilful falsity. I see no evidence of that, and I cannot help observing that the

information was a rather strong step to take; for no one can doubt that the respondent had a foreign diploma of some kind, and had, on the strength of that, called himself for a number of years "Dr. Kelly." Is it to be said that because he has not taken that name down on the passing of this statute, he has "wilfully and falsely pretended to be, or taken or used the name or title of doctor of medicine?" The justices held that he had not, and I think they were right.*

Channell, B. I think, under all the circumstances of the case, the appellant had not wilfully and falsely committed the offence described in the 40th section; and I come to that conclusion upon it, forming no opinion at all upon the other points. I come to the conclusion on that point for the reasons assigned by my brother Bramwell.

Wilde, B. I am of the same opinion. The only question of law is, what is the meaning of "wilfully and falsely?" I agree that that means if a man pretends he has what he has not; and that being the meaning of the Act of Parliament, the view that the magistrates have taken is correct, and the rest of the case seems to be a question of fact. It is really referred to us to determine whether the respondent acted wilfully and falsely, the fact being, that he had a German diploma in his pocket, which might lead him to the conclusion he contended for. A very similar case came before the Court of Queen's Bench, and the learned judges there were of opinion that it was a mere question of fact, and one that ought to be determined by the magistrates. There an individual had called himself a surgeon, and had written after it "mechanical dentist," and it was suggested that was the same as saying "surgeon dentist," and the Court of Queen's Bench determined it was a question of fact whether the party has used those titles, knowing he was not entitled to them, and falsely intending to deceive the public. The only question of law is that turning on the Act of Parliament, and on that I agree not only with the rest of the Court, but with the magistrates.

Judgment for respondent, with costs.

* In *Andrews* v. *Styrap*, Mr. Baron Bramwell stated that he had changed the above opinion. See p. 15.

Ex parte LA MERT, 33 L. J. Q. B. 69.

24*th Nov.* 1863.

The Medical Council are sole judges of whether a registered medical practitioner has been guilty of infamous conduct in a professional respect, and the Council having, after due inquiry, so adjudged, and ordered the name of the medical practitioner to be removed from the Register accordingly, the Court cannot interfere. Minutes, Vol. II., p. 138. Law Jour., Michaelmas 1863. Queen's Bench Cases, 69. 4 Best & Smith's Reports.

The Council had directed La Mert's name to be removed from the Register, under the 29th section of the Medical Act of 1858, on the ground that, after due inquiry, he had been adjudged guilty of infamous conduct in a professional respect. The Council had refused to allow him to be heard by counsel.

A rule was obtained by La Mert, and on its being argued, *M. Chambers*, on his behalf, contended that the conduct of La Mert, as disclosed, did not justify the finding of the Council.

Cockburn, C. J. We are all agreed that sect. 29 of the Medical Act of 1858 makes the Medical Council sole judges of whether a medical practitioner has been guilty of infamous conduct in a professional respect, and this Court has no more power to review their decision than they would have in the present mode of proceeding of determining whether the facts had justified a conviction for felony or misdemeanour under the first branch of the section. The Council have found the applicant guilty after due inquiry, and whether the facts justified the finding or not, the Council is the tribunal to whom the Legislature has left the decision as being the best judges in the matter, and this Court cannot interfere.

Wightman, J., Blackburn, J., and Mellor, J., concurred.

[*Rule refused.*

26 Law Times, N S. p 704. (Reprinted by permission of the Editor.)

SECOND DIVISION OF THE COURT.

(Before Martin, Bramwell and Pigott, BB.)

ANDREWS *v.* STYRAP.

False assumption of title of M.D. The purchase of a foreign diploma no bar to a conviction under sect. 40.

A., a druggist, had attended a patient in the capacity of a medical man, and sent in to him a bill for such attendances headed "Mr. P. to Thomas Andrews, M.D.," setting out a variety of charges for attendance and medicine, &c. He subsequently wrote a letter signed "Thomas Andrews, M.D.," threatening legal proceedings unless the bill were paid, and he gave a receipt for the bill when paid, signing it in the same way. There was a coloured lamp over his shop door, on three sides of which the words and letters "Thomas Andrews, M.D." were painted. It appeared that he had obtained, by the payment of a sum of money, a diploma of Doctor of Medicine from the University of Philadelphia, in the United States, but that he had never been in America, or studied or passed any examination for such degree, and he was not registered under the Medical Act.

On appeal from a conviction by justices, under sect. 40 of the Medical Act, for having unlawfully, wilfully, and falsely taken and used the name, title, description, and addition of "M.D.," and "thereby implying that he was then registered under the Medical Act, whereas he was not so registered," &c., it was held by the Court of Exchequer (MARTIN, BRAMWELL and PIGOTT, BB.) that the conviction was right, and must be affirmed.

This was an appeal from a decision of justices, convicting the defendant, upon an information laid before them, under sect. 40 of the Medical Act, for falsely, &c., taking and using the name and title of a physician and doctor of medicine, and it came before the Court on a case stated by the justices, under 20 & 21 Vict. c. 43. It appeared from the case that at a petty sessions in and

for the borough of Shrewsbury, on the 21st December, 1871, an information was laid by the respondent againt the appellant, a druggist in the said borough, charging him with having on the 25th September, 1871, within the said borough, unlawfully, wilfully, and falsely taken and used a name, title, addition, and description, to wit, "M.D.," meaning thereby "doctor of medicine," and thereby implying that he, the said appellant, was then registered under the Medical Act, whereas he was not so registered, he, the said appellant, not being a person who was actually practising in medicine in England before the 1st August, 1815, contrary, &c.; and upon hearing the said parties, appellant and respondent respectively, by attorney and counsel, the matter was determined by the said justices, and the appellant was duly convicted before them of the said offence and adjudged to pay the penalty of £20, including costs. to be levied in default of payment by distress and sale of his goods, and in default of sufficient distress he was to be imprisoned for two calendar months, unless the said penalty and costs were sooner paid.

The appellant being dissatisfied with the determination of the justices as erroneous in point of law, applied to them to state and sign the present case for the opinion of this Court, from which it appeared that on the hearing it was proved and found as a fact that the appellant had attended a patient, the sister of one Thomas Parton, in the capacity of a medical man, and had, on the day named in the information, sent in to the said Thomas Parton a bill in the following terms:—

Mr. Parton, Shrewsbury, 25th Sept., 1871.
To Thomas Andrews, M.D.
To professional attendance, medicines, &c., late Miss Parton. £17 8*s.* 6*d.*

That on the 7th November following the appellant received £5 on account of the said bill, and on the same day sent in to the said Thomas Parton another bill headed in the same way:—

Mr. Parton,
To Thomas Andrews, M.D.
To professional attendance, medicines, &c., as per items over. £17 8*s.* 6*d.*

And then followed the several items of charge for medicines, attendance, journeys, &c. on the various days specified from

26th April to 26th August, 1871. This bill was accompanied by the following letter from the appellant to Mr. Parton:—

> Sir,—Unless you settle balance of this account before Thursday week, I shall place it in the hands of my solicitor without further notice.
>
> Yours, &c.,
>
> T. Andrews, M.D.

The balance of the said account was paid on the following day by the said Thomas Parton, who received the following bill and receipt of the 9th November:—

> Mr. Parton, Shrewsbury, 9th Nov., 1871.
>
> To Thomas Andrews, M.D.
>
> To professional attendance, medicines, &c., &c., Miss Parton.
>
> Balance of account. £12 8*s.* 6*d.*
>
> 9th Nov., 1871.
>
> Settled. Edwyn Andrews.

It was further proved that the appellant had a lamp over the door of his shop at Shrewsbury, on three sides of which the words "Thomas Andrews, M.D.," were painted.

The Medical Register for 1871 was produced, and upon searching it the name of the appellant was not found there.

On the part of the appellant the above facts were not denied, except as to the words "unlawfully, wilfully, and falsely," and, in support of the contention that the appellant did not unlawfully, wilfully, and falsely take and use the title of M.D., &c. (as charged in the information), a diploma of the American University of Philadelphia, in the United States, dated 20th February, 1871, was put in. It was in Latin, and the following translation was handed in to the justices by the appellant:—

> To all to whom this present letter may reach,
>
> The President, Fellows, and Professors of the American University of Philadelphia, founded by the Laws of the Republic of Pennsylvania, give salutation.
>
> Inasmuch as in all Universities properly and legitimately constructed, either here or elsewhere in the world, it was a praiseworthy and ancient usage that men who have not less diligently and faithfully paid attention to literature or to in-

> genuous arts, or to any liberal studies whatever, meanwhile conducting themselves uprightly and honourably, should be adorned with some distinguished honour and raised to merited dignity, and since, by the laws of our Republic, we possess the fullest power of distinguishing and decorating with academical titles, and of advancing to degrees in sacred theology, in arts and medicine, gentlemen well deserving of them, we therefore, furnished with this authority, and not unmindful of the ancient usage, have adjudged, and at a meeting of the Council have decreed, the eminent gentleman devoted to the highest pursuits, Thomas Andrews, about whose proficiency in medical science and honourable character we have sufficiently inquired and scrutinized, to be worthy and fitting to be honoured as a learned man in the highest degree of dignity: wherefore with one accord we have both elected and made him Doctor of Medicine, and have given and assigned to him all rights and privileges which belong to that degree. Now all and singular these proceedings we in good faith notify unto you by the present letter, fortified with our seal and the signature of the President of the University, this 20th day of the month of February, and in the year of our Lord 1871.

A seal purporting to be the seal of the said University was appended to this document, as were also several signatures purporting to be the signatures of professors or officers thereof.

A witness also proved that he held a similar diploma from the said University, and that he had been in America, and he testified to the authenticity and genuineness of the seal and the signatures appended to the appellant's diploma. He also said, on cross-examination, that á diploma could be obtained by an examination before examiners in England commissioned by the University of Philadelphia for that purpose. It was not alleged that the appellant had ever been in America, nor was any proof given that he had undergone any examination in order to obtain the diploma.

Upon these facts the justices came to the conclusion that the appellant had committed the offence charged in the information, and they duly convicted him thereof as aforesaid, and the question for this Court is whether, upon the above facts, the justices were justified in coming to that conclusion, and so convicting the said appellant, or whether the fact of the appellant having obtained the above-mentioned diploma exonerated him from the charge made against him.

Sects. 31, 36, and 40 of the Medical Act of 1858 were referred to.

Huddleston, Q.C. (with him was *Bullen*), for the respondent, supported the conviction, and following the course adopted in *Ellis* v. *Kelly* (3 L. T. Rep. N. S. 331; 30 L. J. Ex. 74 and M. C. 35; 6 H. & N. 222) and *Jones* v. *Taylor* (28 L. J. M. C. 20) was called on by the Court to begin. He contended that the conviction was right, and that the justices, having found all the facts and come to a decision upon them, the Court would not interfere with the conclusion at which they had arrived.

Ladd v. *Gould*, 1 L. T. Rep. N. S. 325.

R. Vaughan Williams for the appellant, *contra*, urged that the diploma of the University of Philadelphia, which was an institution of high standing and fully empowered to grant degrees, was a sufficient warrant for the appellant's use of the title of "M.D.," and saved him from coming within the operation of sect. 40 of the Medical Act. [PIGOTT, B. The American University may be all that you say it is, but unfortunately this student has never been there.] It appears that the University is constantly in the habit of appointing examiners in other countries, and *non constat* that that was not done here. The fact of the Act of Parliament granting certain privileges to some persons and imposing certain restrictions on others, by no means makes it unlawful to practise or to assume the title of "M.D." The Act only imposes certain liabilities or restrictions, as for instance, by sect. 36, no unregistered person can hold certain medical offices there specified. If it be contended that the mere fact of practising as a "doctor" without being registered is an offence, the answer is in that section. The offence must be something more; a man must practise as a doctor with the object of obtaining the privilege conferred by the Act on registered individuals, or of avoiding or getting rid of the disabilities imposed

upon non-registered persons. The mere fact of using the letters "M.D." after his name is no evidence of the offence, or of doing anything coming within the two last-mentioned heads. The case of *Ellis* v. *Kelly* (*ubi sup.*) is an authority that the merely appending "M.D." to one's name is no offence under the Act. In the present case it was done under a supposed right by virtue of the foreign diploma, and *Ellis* v. *Kelly*, as well as *Pedgrifft* v. *Chevalier* (20 L. J. M. C. 225; 8 C. B. N. S. 246), show that that is no offence. The evidence in the present case is very similar to that in *Ellis* v. *Kelly*, and the remarks of the Court there, and particularly those of Bramwell, B., that it is the doing the thing "wilfully and falsely" that constitutes the offence under the Act, which doing it under a supposed, even if it be a mistaken right, cannot be held to be, are very applicable here. The appellant here had a foreign diploma. [MARTIN, B. It is no diploma at all; it is a mere pretence. BRAMWELL, B. *The matter does not appear to me now as it appears to have appeared to me then.*] It is submitted that there is no evidence here of the appellant having done anything more than incorrectly or mistakenly used the title of "M.D." In this case it is an American degree; in *Ellis* v. *Kelly* it was a German one. *Pedgrifft* v. *Chevalier* (*ubi sup.*) shows that the mere fact of a man's name not being in the Medical Register is not sufficient to warrant a conviction, for which purpose there must be evidence of wilful falsity, of which there is here an entire absence. To hold the appellant guilty of the offence would seriously affect hundreds of Scotch practitioners who are not registered under the Act.

MARTIN, B. I believe we are all of opinion that the justices were perfectly right and thoroughly well warranted in the conclusion at which they arrived upon the facts before them in this case, and that, therefore, this conviction must be affirmed. It is plain to my mind that this is a question of fact. There was ample evidence that this appellant wilfully (for he did it on purpose) and falsely (because he pretended thereby to be on an equal footing with any regularly bred and registered physician or M.D. in England) took, assumed and used the title of "M.D." under a diploma obtained by him from an American University, without any course of previous study or any examination, but simply on the payment of a sum of money, and which diploma,

therefore, he must have known to be, in fact, utterly worthless and valueless as an indication of the possessor's merit, learning and skill as a physician, or as giving him any of the privileges of a registered medical man. I am glad to hear from a learned gentleman now in Court that the American Legislature have recently prohibited the granting of these degrees to persons on the payment of a sum of money only, and without a previous course of study and preliminary examination. The conviction must be affirmed.

Bramwell, B. I entirely agree with all that has been said by my brother Martin.

Pigott, B. I also concur in thinking that this conviction must be affirmed.

Judgment for the respondent, affirming the conviction, with costs.

HENRY FRANCIS PARTRIDGE.

July, 1885.

HENRY FRANCIS PARTRIDGE was a dentist, holding a diploma as licentiate in dental surgery from the Royal College of Surgeons, Dublin, 1878. By this qualification he was entered on the Dentists' Register. He had also been a dentist in practice before the Dentists Act, but this qualification had not been entered on the Register. On granting his diploma, the College obtained from him a pledge that he would not advertise. He did advertise, and after repeated warning the College withdrew his diploma, and gave notice of such withdrawal to the Council, who thereupon erased his name from the Register without inquiry, on the ground that a person without a qualification could not remain on the Register. This was done 2nd June, 1886.

A practitioner's name cannot be erased from the Dentists' Register on the sole ground that he has lost the qualifications which originally entitled him to registration, but it can only be erased for the causes mentioned in sect. 13 of the Dentists Act after due inquiry by the Council, at which inquiry he has had the opportunity of being heard.

Minutes. Vols. XXII. pp. 179, 239; XXIII. p. 56; XXIV. p. 320; XXVII. p. 204; XXIX. pp. 160, 166, 167; XXXVIII. pp. 194, 222. Times, 16 June, 1887. Shorthand Notes of Judgment. 19 Q. B. Div. 467.

In February, 1887, Partridge obtained a rule for a mandamus. The rule was argued before Justices Mathew and Smith. Partridge's counsel contended that a dentist's name could only be erased from the Register on account of some cause mentioned in sect. 13 of the Dentists Act. Counsel for the Medical Council contended that the Medical Council could neither give nor take away qualifications—that a qualification was necessary for registration, and that a name without a qualification ought not to appear on the Register.

In June, 1887, Mr. Justice MATHEW, in stating the facts of the case, said: "The applicant had, since 1867, practised in the Metropolis as a dentist, and it was admitted that when the Act passed he would have been entitled to be registered as a dentist if an application had been made by him in accordance with the provisions of sect. 7. He had not, however, applied for registration in respect of this qualification. In 1878, Mr. Partridge obtained from the Royal College of Surgeons, Ireland, a diploma in dentistry, and as a licentiate of this body, which was one of the medical authorities referred to in the Act, he applied for and procured registration under the statute (sect. 6). The diploma had been granted on the terms that the holder should not seek to attract business by advertising, or by any practice considered by the College unbecoming, and that the diploma might be cancelled on its being proved to the satisfaction of the President and

Council that he had done so. In the year 1885 the Royal College of Surgeons of Ireland, upon the ground that Mr. Partridge had advertised for business, cancelled his diploma, and thereupon the General Council directed his name to be erased from the Register. The 11th section of the Act contains provisions as to the contents and form of the Register, and as to corrections to be made in it from time to time.

"It was argued for the General Council, that where the original qualification no longer existed, the Council were bound to correct the Register, and erase the name, as if there never had been a qualification. On the other hand, it was argued for the applicant that the name of a person qualified either by practice or diploma, when once properly placed on the Register, could only be erased in the manner and upon the grounds specified in the statute. It was urged that the mere fact that the diploma had been cancelled by the medical authority which had granted it was not a ground upon which the General Council was justified in disqualifying the applicant, or exposing him to the penalties imposed by the Act upon unqualified practitioners. We are of opinion that the contention of the applicant is right, and that he is entitled to have his name restored. [*His Lordship here read sects.* 12 *and* 13, *and also referred to sect.* 15.]

"It appears to me that, in such a case as the present, the Medical Council possessed no further powers of dealing with the Register than those conferred in the sections referred to. It was admitted that the Council had not decided that Mr. Partridge had done anything to justify the removal of his name under sect. 13, but had considered that they were bound to erase his name when the determination of the medical authority granting the diploma had come to their knowledge. But this is a course which, it seems to us, they were not entitled to adopt, otherwise it would seem that where a medical authority has withdrawn a diploma on the ground, for instance, that a particular theory of dental surgery had been adopted or discarded, the name of the holder must be struck from the Register. But this is a ground upon which the General Council, under sect. 13, are expressly prohibited from erasing a name. The 3rd clause of sect. 13 appears to show that the Council was not intended to be bound by any determination of the medical authority, even

with respect to the grounds for erasing a name specified in sect. 13, but was required to adjudicate independently. This view is strengthened by an examination of the provisions in the last clauses of sects. 13 and 14, where it is provided that the medical authority shall be bound by the decision of the Council, but there is no provision that the Council shall be bound by the decision of the medical authority. The Dentists Act, 1878, contains no similar provision to that of the Medical Act of 1858, which empowers the Council, 'if they see fit,' to erase from the Register the name of a practitioner struck off the list of the medical authority. The Dentists Act appears to be carefully framed to restrict the right of the General Council to interfere with registered dental practitioners in the practice of their profession to the cases where there are the grave reasons for disqualification which are specified in sect. 13."

The Council appealed from this decision. The Appeal Court consisted of Lord Esher, Master of the Rolls, and Lords Justices Lindley and Lopes, whose judgment was delivered in August, 1887, as follows :—

Lord Esher. In this case the applicant for the mandamus was, in 1878, a licentiate in dental surgery of the Royal College of Surgeons in Dublin, and in respect of that qualification he was put on the Register established by 41 & 42 Vict. c. 33. Since then, in consequence of a breach by him of the undertaking he entered into with the authority by whom he was licensed, such authority revoked his licence. For that reason, and for that alone, the General Medical Council have erased his name from the Register. They have not exercised, or affected to exercise, any jurisdiction under sects. 13 and 15 of the Act, but as a mere consequence of the fact that he is no longer a licentiate of the Royal College of Surgeons in Ireland, they have treated him as no longer entitled to be on the Register. The question whether they were right in so doing depends upon the true construction of the 41 & 42 Vict. c. 33. The 6th section of that Act provides that "any person who" (among other things) "is a licentiate in dental surgery, or dentistry of any of the medical authorities, 'shall be entitled to be registered under this Act.'" It seems to me that that section is dealing with the moment of time when the person is to be put on the Register.

The words "entitled to be registered" must mean either "entitled to be put on," or "entitled to be kept on the Register." It appears to me that their natural meaning under ordinary circumstances would be "entitled to be put on the Register." But I think that the provisions of sect. 7 are strong to show that this is the meaning. That section provides, that "where a person entitled to be registered under this Act produces, or sends to the General Registrar, the document conferring or evidencing his licence or qualification, with a statement of his name and address, and the other particulars, if any, required for registration, and pays the registration fee, he shall be registered in the Dentists' Register." The words "entitled to be registered" there clearly mean "entitled to be put on the Register." The things which are required to be done by this section, in order to procure registration under sect. 6, are to be done once for all, and apply only to the time when the person is to be put on the Register. He is not required, for instance, to pay an annual fee to the Registrar, but one fee once for all. It seems to me that this construction gets rid of the appellant's best point, viz., that which was made upon the phraseology of sect. 11. That section provides, that "the Register shall contain, in one alphabetical list, all United Kingdom dentists, that is to say, all persons who are registered under this Act as having been at the passing thereof engaged in the practice of dentistry or dental surgery" (which latter words can only apply to the time of first putting on the Register), and "all persons who are registered as licentiates in dentistry, or dental surgery, of any of the medical authorities of the United Kingdom." Those words are quite satisfied by treating them as referring to the time of first putting the registered person on the Registry under the Act. The section goes on to provide that the Register shall state the date of the qualifications in respect of which the registered persons are registered. If the Register is one to be made once for all, it seems to me that the date which it is to give must be the date of the qualification in respect of which the registered person is originally registered, and that it does not necessarily mean the date of a qualification which continues to exist. Sub-sect. 3 provides, that the General Council shall cause a correct copy of the Dentists' Register to be

from time to time, and at least once a year, printed under their direction, and published and sold. That provision would be necessary in any view, because there must be constant additions to the Register under the Act, and there would be erasures under the provisions of sect. 13. But it does not show that there is to be a fresh Register year by year. So far, there is no provision for any dealing by any body with the Register, except in regard of the original functions of registration. But then, by sect. 12, the Registrar is given certain powers of erasure in regard to deceased persons, and persons who have ceased to practise; and, by sect. 13, it is provided that the General Council shall cause to be erased from the Dentists' Register any entry which has been incorrectly or fraudulently made therein, and that, where a person registered in the Dentists' Register has either before or after the passing of the Act, and either before or after he is so registered, been convicted, either in Her Majesty's dominions or elsewhere, of an offence which, if committed in England, would be a felony or misdemeanor, or been guilty of any infamous or disgraceful conduct in a professional respect, that person shall be liable to have his name erased from the Register.

The General Council are by the section, upon the application of any of the medical authorities, to cause inquiry to be made into the case of any person alleged to be liable to have his name erased under the section, and the mode in which such jurisdiction is to be exercised is pointed out by sect. 15, which provides for ascertaining the facts of the case by a committee, whose report is to be conclusive as to the facts for the purpose of the exercise of the said powers by the General Council. Where the person is proved to have been convicted or to have been guilty of infamous or disgraceful conduct, under sect. 13, the Council are to cause his name to be erased from the Register, and any name so erased is to be erased from the list of licentiates of dental surgery or dentistry of the medical authority of which such person is a licentiate. It seems to me that these provisions go to show that the power of erasure by the Council is in the nature of a judicial power, and must be confined to the matters into which they are authorized to inquire for the purpose of exercising such power. It may be that the local or more limited medical authority may strike a man off their Register for a

breach of an undertaking on which he obtained his qualification. But upon the true construction of this Act I think we are bound to say that the mere fact that a medical authority has struck a person's name off their Register of Licentiates does not authorize the erasure of his name by the General Council from the Register under this Act in the absence of any exercise by the Council of the judicial powers given to them by sect. 13. The Dentists' Register is a novel institution, the creature of the Act of 1878, and it seems to me that there can be no powers of dealing with the Register so created except those which are given by the Act. But, although I come to the conclusion that the mere fact that the registered person had been struck off the list of licentiates of a medical authority does not entitle the General Council to erase him from the Dentists' Register, yet I think I ought to state that in my opinion the Council would have jurisdiction under sect. 13 if they thought on inquiry that the registered person had broken the condition on which his licence was obtained in such a way and under such circumstances as that he had been guilty of disgraceful conduct in a professional respect, which might be the case if they found that such breach of his undertaking was of a deliberate and systematic character. For these reasons I think the appeal must be dismissed, and the mandamus must issue, but the fact of its so issuing must not be considered as preventing the Council from exercising any jurisdiction they have over the matter if brought before them under sect. 13 of the Act.

Lord Justice Lindley was of the same opinion. He said the case is one of great importance, particularly to the various medical authorities described in sect. 1 of the Act of 1878. The effect of our decision is, that it will not be competent for the General Council, without exercising their jurisdiction under sect. 13, and simply because a licentiate of a local medical authority has been struck off the Register of that authority, to erase his name from the Dentists' Register. Whether this result was actually intended by the legislature I cannot say; it seems curious that the Act of 1878 should contain no provisions analogous to that of sect. 28 of the Medical Act of 1858; the consequence is that the various authorities have less power over dentists than over other medical men.

The question seems to me to turn principally upon sects. 6, 7, and 11 of the Act. It appeared to me, at first, a strange thing to say that a person who, not being a licentiate, would not be entitled to be registered, is nevertheless entitled to be on the Register; but the answer is to be found in the true meaning of the expression, "entitled to be registered," as used in the Act. That expression in sect. 6, read by the light of the provisions of sect. 7, seems to me to mean, "entitled to be put on the Register in the first instance." The true construction of the Act appears to me to be this: there are certain provisions which regulate the function of registering persons, and certain provisions which regulate the removal of persons from the Register. The provisions which regulate the removal of persons from the Register are to be found in sects. 12 and 13. Sect. 12 provides for the erasure of the names of deceased persons, and persons who have ceased to practise. Sect. 13 authorizes the Council to erase the names of convicted persons, and those guilty of infamous or disgraceful conduct in a professional respect. There is no provision which enables the Council to remove the name of a person once on the Register, simply because he has been struck off the Register of Licentiates of the body which originally licensed him. That being so, I think the mandamus must go, without prejudice, however, to the jurisdiction of the Council under sect. 13, if they should be of opinion that the facts bring the case within that section.

Lord Justice Lopes. I also think that the true construction of the Act is, that when a person's name is once placed on the Register it cannot be removed, unless the case is brought within sects. 12 or 13, and that it cannot be removed merely because the person has lost the qualification in respect of which he was originally entitled to be registered. Therefore it seems to me that the order directing the mandamus to issue was right. I desire to add, that in my opinion it is clearly still open to the General Council to exercise their jurisdiction under sects. 13 and 15, if it should be shown to them that there is a case within these sections; and if they found that a person has acted wilfully and deliberately in violation of an undertaking, upon the faith of which he obtained his licence, I should suppose they would have little hesitation in coming to the conclusion that he had

been guilty of disgraceful conduct in a professional respect. For these reasons I think the appeal should be dismissed.

The mandamus issued, and Partridge's name was restored to the Register.

The Council, in exercising its penal jurisdiction, acts *quasi*-judicially, and is not liable in damages for an erroneous decision if come to without malice.

In November, 1887, after due inquiry, the Council found that Partridge had violated his undertaking, that this was infamous conduct in a professional respect, and they directed his name to be erased.

In November, 1888, Partridge brought an action against the Council to recover damages for the removal of his name in June, 1886. The action was tried by Baron Huddleston, 20th December, 1889. The defence was, that defendants had acted as a judicial body—had had certain matters connected with the plaintiff's professional conduct brought before them to decide; that though the Court of Appeal had decided that their decision was wrong, yet it was arrived at *bonâ fide*, and without malice.

Shorthand notes.

Newspaper report.

Baron Huddleston gave judgment for the Council, holding that there was no evidence of malice on the part of the defendants, and therefore the action did not lie. He observed that the defendants, when the plaintiff's conduct in violation of his undertaking not to advertise was brought to their notice, had taken his name off the Register, and subsequently by order of the Court of Appeal had to reinstate it; but for this were the defendants liable to an action? He did not think it required authority to establish that where persons in a *quasi*-judicial capacity exercised their discretion wrongly, no action could be maintained against them for such a decision, unless it could be shown that they arrived at their decision maliciously. Here there was no evidence at all of malice, and the plaintiff must therefore be non-suited, and judgment entered for the defendants.

Partridge appealed against this decision, and in May, 1890, the Master of the Rolls, Lord Justice Fry, and Lord Justice Lopes, upheld the decision.

The Master of the Rolls said: "Mr. Baron Huddleston came to the conclusion that malice was not proved. Can anybody doubt that that was true in this case? It is idle to talk of there being a scintilla of evidence to go to the jury. Everybody who has heard this case and heard how it was conducted must be of

opinion, beyond all doubt, that these gentlemen were not acting maliciously towards Mr. Partridge; they were endeavouring to do their duty to their profession." "When they are asked to erase a man's name on account of any misconduct of any kind, I will inform them what, in my opinion, is the course which they should take. If they come to a knowledge of such an accusation against any person who is on the Register, they ought immediately carefully to inquire whether there is any ground for such an accusation, and if they have any doubt about it, that is to say, unless they come to the conclusion that it was utterly groundless, the first thing they ought to do is to communicate with the person whose name has been mentioned to them and ask him for an explanation. I do not say that they ought to call him before them in person, or that they ought to hear witnesses upon oath (that they cannot do), or that they ought to hear witnesses in his presence. That might be well if there was a grave dispute about the facts. But at the least they ought to write to him at once and ask him for an explanation—'Do you admit or deny these things that have been charged against you?' If he admits them, they may act; if he denies them, they must go on and further inquire; they must make a careful and fair inquiry, and if any evidence is given against him they ought to communicate that evidence to him at once, and ask him—'Can you explain this evidence, or do you wish to meet it by other evidence?' and it is not till after they have done that, that they ought to erase the name of any person charged. I think they have no power to erase the name without a charge unless it be in the cases mentioned in sect. 12; but even then, if there is any doubt of the facts, they ought to call upon the person to answer them, or they ought to make inquiries. On this occasion they did not do what they ought to do, for they struck off the name of Mr. Partridge without communicating with him, and without giving him the opportunity of explaining or the opportunity of denying; and upon that ground, when the case was before the Court before—when the question was whether they rightly struck him off—the Court said, 'No, you have not taken the proper steps, you must put it on again, unless you can prove hereafter that there were proper grounds for your striking it off. It is admitted that they did this thing

wrongly. Now comes the question whether the plaintiff can maintain an action against them in the absence of malice. What were they entitled to do? They most certainly were entitled to perform the duties imposed upon them by this Act of Parliament. They are public duties; they are for the protection of the public as well as of their own profession. Then they were entitled to act under this Act of Parliament. Now, this Act of Parliament contains two sections—one is the 13th. I have shown that in my opinion they ought to have acted under sect. 13. In such a serious thing as erasing a man's name on the accusation or information that he has been acting disgracefully—that is in a manner disgraceful in one of his profession—I should take it that they intended to act under the Act of Parliament. They ought to have acted under sect. 13, but they did not, at all events not wholly, for I now think that in all probability they were acting under sect. 13 and sect. 11. To my mind, it is clear that the thing which they have done is not merely ministerial. It was argued strongly that sect. 13 is merely ministerial. Now in that it is impossible, I think, to agree. Obviously that is judicial as nearly as possible—purely judicial. I am of opinion that if they, intending to act under the Act of Parliament, acted erroneously on a wrong section of the Act, nevertheless they would be protected, and were protected, if the act they did was not merely a ministerial act, and it was not. They have, under sect. 11, given a special order to erase his name from the Register. Was that a thing which was merely ministerial if it was done under sect. 11? Are they called upon to do that without any discretion whether they will do it or not? It is obvious to my mind that if it is done under sect. 11 there is a discretion under sect. 11. Then I come to the proposition which I think is a right one, namely, that wherever a public duty is imposed upon people which they undertake to fulfil, and that duty consists in exercising a discretion whether they will do it or not, it cannot be said that the exercise of that discretion is a merely ministerial act, and if it is not merely a ministerial act, and it is done by virtue of a duty imposed by Act of Parliament on behalf of the public, then it is, for the purposes of this protection, to be considered as judicial. If there is anything of discretion in it, it is not merely ministerial, but it is for this

purpose to be considered as partly judicial. It is only where the duty is merely ministerial that there is no protection; where it is anything more, and there is a public duty, there is a protection. I think, therefore, that the protection existed in this case, it being properly found that there was no malice, and that this action could not be maintainable, and that the judgment of Mr. Baron Huddleston was right.

Lord Justice Fry. The learned judge in this case has found that there was no malice on the part of the defendants, and after the prolonged investigation of this case, I think that the rightness of that finding is perfectly apparent. So far from there being any malice on the part of the defendants, they proceeded in the matter with great care and great deliberation, and were anxious to discover all the facts of the case; and although they made an error, they seem to me to have proceeded with the utmost good faith and endeavour to be right.

That being so, it follows that the inquiry arises whether the plaintiff has any cause of action in the absence of malice. That again appears to me to depend entirely on the inquiry whether or no the Council were performing merely a ministerial duty in what they did. Because I agree with the Master of the Rolls, that where a public body is constituted and certain duties are cast upon that body, and the members of that body act without malice and have discretions to exercise, they are not responsible by action for an erroneous exercise of the discretion so vested in them. Now it appears to me that the general scheme is this—that the Registrar is the person by whom all the ministerial acts are to be done in regard to the Register. Sect. 11 provides that the Register shall be kept by the General Registrar; it is called the Dentists' Register; and then it contains certain provisions with regard to what are the contents of that Register. Sect. 12 provides that the Registrar shall from time to time insert any alterations in the Register, and in fact he shall keep the Register; but although the Registrar is to perform all ministerial duties, he also has certain duties which are not merely ministerial; he has to exercise certain discretions; one would be with regard to the evidence upon which he may act, and therefore, although I may say he is a ministerial officer, I am not certain that in all cases he is a purely ministerial officer. Then

when we come to consider the position in which the Council are placed in regard to the duties of the Registrar, we find that they have power to superintend him. In the first place, they are to determine and to direct the particulars which are detailed in the Register, and the form in which the Register is from time to time to be kept. It is obvious that there they are clothed with a discretion; they have to consider what the interests of the profession and the public require with regard to the mode in which the Register is to be kept. Then it is further provided that the Registrar shall in all respects, in the execution of his discretion and duty in relation to the Register, "conform to any orders made by the General Council under this Act." Those words, in my opinion, certainly include, and I think they primarily refer to, any orders which may be made by the General Council under the 13th section in the exercise of their judicial discretion; but more than that, the Registrar is to conform to any special directions given by the General Council. There again it appears to me that the duty of the General Council is one which involves the exercise of discretion. It seems to me impossible, having given general directions with regard to the Register, that they can rightly give special directions unless in the exercise of a discretion, and on a consideration of all the facts and circumstances of the case which involve the making of such special directions. Now, the conclusion at which we arrive on the facts before us is this: that the General Council desiring, as I have already said, to do their best in the circumstances of this case, came to the conclusion that the Register must automatically follow the qualification; they thought that where the qualification had been withdrawn, there the Register ought to be, so to speak, to use their own language, corrected in accordance with it, and that they had power to require such correction to be made by giving a direction or making an order to that effect. In that view they were wrong, but in making that error they were exercising their discretion; they were doing what they thought was right in the exercise of those discretionary powers over the Register which had been given them by the statute. So far, therefore, as I can gather, there is no duty which the Council have to exercise with regard to this Register which is not more or less discretionary. I conclude, therefore, that they were not

performing, or purporting to perform, a purely ministerial function; they were acting in the exercise of a discretion which they believed to be vested in them, and although they acted erroneously in the exercise of that discretion, they are nevertheless entitled to the protection of the general rule. I think, therefore, that the decision was perfectly right.

Lord Justice Lopes. In this case it must be taken that the defendants acted *bonâ fide* and without malice. It must also be taken that the defendants improperly erased the plaintiff's name from the Register, but they acted honestly and made a mistake in the mode of their proceeding. They thought that, without calling upon the party implicated, they were justified in erasing his name, because the qualification which had entitled him to be put upon the Register had ceased. Now, in such circumstances, can the plaintiff maintain an action against the defendants? It is not disputed that the defendants were discharging a public duty; it is admitted that they intended to act under the powers of the Act, but the question which has been contested is this, and it is the material question in the case, whether they were acting judicially. If they were acting under sect. 13 of the Act it cannot, I should think, be disputed but that they were acting judicially. But then it is said that they were acting under sect. 11, and that, acting under that section, they were not acting judicially but purely ministerially. I will not refer again to sect. 11, the different sub-sections of which have been already referred to, but the result of those sections is, that the defendants have a power to give special directions to the Registrar to which he is to conform. They have a discretion as to the directions they give, and therefore, in my opinion, having that discretion, they are acting judicially. So that it comes to this, that whether they are acting under sect. 13 or under sect. 11, in my opinion they are acting judicially, and if they are acting judicially and without malice, according to the cases, it is clear that they are entitled to protection, and I think, therefore, that the defendants are entitled to succeed, and that the learned judge was right, and that this appeal should be dismissed.

Partridge brought an action in 1891 for restoration of his name and for damages.

This action was tried before Mr. Justice Denman and a special jury in February, 1892.

Shorthand notes. Newspaper report.

Mr. Justice DENMAN remarked that the Appeal Court threw out in the strongest possible way that their decision that Partridge had in the first instance been improperly struck off by reason of the diploma being cancelled, was to be construed without prejudice to the question of his liability to be erased for disgraceful professional conduct, such conduct being that, whereas he held a diploma which he had procured by declaring that he would not advertise, he had advertised contrary to that declaration. Mr. Justice Denman added, it was impossible for him to say that this was not disgraceful conduct in a professional man—it was a matter purely and entirely for such a tribunal as the Medical Council, and that Council were appointed for the very purpose of such inquiries, and it would be as outrageous to say that a mandamus would lie to any of the Inns of Court who disbarred a barrister who had been advertising that he would do business for anybody and take 3*s.* 6*d.* on his brief, on the ground that this was not capable of being disgraceful professional conduct, as to say it was not capable of being disgraceful professional conduct in a medical man or surgeon-dentist to advertise largely and spend enormous sums in advertising cheap dentistry for the benefit of the community. Mr. Justice Denman having thus disposed of the first point, *i.e.*, that there was no evidence of disgraceful conduct, proceeded to the second point, that Mr. McNamara, as Fellow of the Royal College of Surgeons, Dublin, and seconder of a resolution that Partridge's case should be referred to the Dental Committee, acted as accuser, and ought not therefore to have taken part in the proceedings of the General Medical Council when his name was removed. The learned judge considered that Mr. McNamara was not a person by whose presence at the time of the removal the proceedings could be vitiated. As to the third point—insufficient notice—the learned judge considered that he had sufficient notice; and as to the fourth point, the learned judge held that there was no malice. He therefore non-suited the plaintiff, who thereupon appealed.

See *Leeson's Case.*

23rd Mar. 1892. Shorthand notes. *Morning Post.*

The MASTER OF THE ROLLS (with him FRY and LOPES, L. J.), in giving judgment, said the appellant, in joining an honourable and registered profession, privileged by Act of Parliament, must

abide by its rules. The Medical Council were a domestic tribunal formed for the purpose of keeping their profession in order, and, if they found him guilty of professional misconduct, they had a right to strike him off the Register. Plaintiff had previously been in a similar body in Ireland, and they had taken action against him for advertising, holding that it was disgraceful conduct. He had promised not to do so again, and yet admitted that he had since spent £10,000 in advertising. He [the Master of the Rolls] held that it was not fair or gentlemanly to advertise in the medical profession. It was just the same in the legal profession. If any one advertised his superior talents, his superior experience, or that he did his advocacy cheaper than others, he would say that such a thing was not fair, honest, or honourable to the other members of the profession. The thing itself was monstrous. He would not stop to make another observation beyond saying that it would be so disgraceful that such a one ought to be disbarred. The learned judge was of opinion that advertising alone was evidence upon which the Council could act—that advertising in breach of a promise not to do it was more than ample evidence upon which the Council might exercise their jurisdiction. It was now clear from the evidence that after he had been warned by the Irish Society, and promised not to advertise in future, he had spent large sums, and therefore, from the evidence alone, it was clear that no mandamus could go unless there was some other fault to be found with the proceeding.

It was urged that a mandamus ought to go because the finding of the committee was contrary to natural justice, inasmuch as the appellant was not present to state his case. It was idle to urge that in face of what really was the case. He was written to and told that if he appeared he would be heard; but he chose to keep away; therefore such a contention would not hold water. The learned judge then dealt with Mr. McNamara's position, and said that it was contrary to natural justice that an accuser should be also a judge, but that he might have acted as judge both in Ireland and at the Council, and that there was no evidence of his being an accuser at all, nor of his being interested as a judge. The Master of the Rolls said the Council were absolutely correct in what they had done.

Lord Justice Fry said Mr. Partridge had habitually and wilfully broken the undertaking into which he entered on receiving his diploma. That was disgraceful conduct in his Lordship's opinion. He said nothing as to whether advertising was or was not disgraceful conduct. That point was not before the Court. His Lordship concurred with the judgment of the Master of the Rolls.

Lord Justice Lopes also concurred in the judgment of the Master of the Rolls. The evidence was such that the Medical Council not only could but should have found Mr. Partridge guilty of disgraceful conduct in a professional respect. They were the sole judges of fact.

Appeal dismissed accordingly.

Note.—On August 10th, 1888, Partridge was fined £5 and 3 guineas costs for using the letters L.D.S. after his name.

HENRY ARTHUR ALLBUTT.

Case of Henry Arthur Allbutt. Minutes: Vol XXIV. p. 16.

In November, 1887, the Council after due inquiry directed the Registrar to erase the name of Henry Arthur Allbutt for infamous conduct in a professional respect, and for having published "The Wife's Handbook."

Allbutt brought an action for a mandamus to restore his name, for damages for removing it, and an injunction against and damages for printing and publishing of him that he had been guilty of such conduct.

The case was heard by Pollock, B., in January, 1889. The learned judge was of opinion that there was no evidence to go to the jury; that defendants were well within their jurisdiction; he could not interfere with their discretion. As to the libel, he held it was privileged, and he gave judgment for defendants with costs. Allbutt appealed.

Decision in *La Mert's Case* confirmed.

The appeal was heard by Lord Coleridge, C. J., Lindley, L. J., and Lopes, L. J.

Lopes, L. J., on July 6th, delivered the judgment of the Court as follows:—The plaintiff complains that the defendants (the General Council of Medical Education and Registration of the United Kingdom) have wrongfully and unlawfully erased his name from the Medical Register, and asks for a mandamus commanding the defendants to restore his name on the Register. The plaintiff also complains that the defendants have libelled him by printing and publishing of him, in a book entitled "Minutes of the General Medical Council," that his name had been erased from the Medical Register, p. 317, and that in the opinion of the Council the plaintiff had committed the offence charged against him; that is to say, of having published and publicly caused to be sold a work entitled, "The Wife's Handbook," in London and elsewhere, and at so low a price as to bring the work within the reach of both sexes, to the detriment of public morals, and that the offence was, in the opinion of the Council, infamous conduct in a professional respect. With regard to the erasure of the plaintiff's name, the plaintiff says

Note.—Publication of Council's Minutes privileged if made in good faith and without improper motive. 58 Law Journal, Queen's Bench Cases (Court of Appeal), 606.

the defendants acted without jurisdiction, that there was no evidence of any infamous conduct in a professional respect, and therefore nothing upon which to found their jurisdiction. The defendants say, on the other hand, they lawfully, and in the exercise of a jurisdiction conferred upon them by Act of Parliament, struck the plaintiff's name off the Register; and that as there was jurisdiction to enter upon this inquiry, they (the Medical Council) are the sole judges of what was done during the inquiry which they had jurisdiction to initiate. The learned judge thought there was no evidence of any of the complaints which he ought to leave to the jury, and gave judgment for the defendants. The section upon which the Council have acted in erasing the plaintiff's name is the 29th section of 21 & 22 Vict. c. 90, which says:—"If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall, after due inquiry, be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the Registrar to erase the name of such medical practitioner from the Register." Having regard to the nature of the complaint, the Council clearly had jurisdiction to enter upon the inquiry, and having that jurisdiction, are constituted by the Legislature the sole judges whether that complaint was substantiated. To use the words of Chief Justice Cockburn in *Ex parte La Mert*, "This Court has no more power to review their decision than they would have in the present mode of proceeding of determining whether the facts had justified a conviction for felony or misdemeanour under the first branch of the section."

It is said by the plaintiff that there was no "due inquiry," and that that question ought to have been left to the jury. We think that there was no evidence of any absence of due inquiry which ought to have been left to the jury. All charges of *mala fides* were withdrawn, and it was admitted the Council acted honestly and without any improper feeling or motive towards the plaintiff. We can find nothing irregular in the proceedings of the Council; the plaintiff had every opportunity afforded to him of bringing his case before the Council, who heard his counsel and his evidence, and adjudicated thereon.

With regard to the alleged libel, questions of greater difficulty arise, and questions of grave importance. The defence of the Council is, that they published what is complained of *bonâ fide*, and without malice, and in circumstances which constituted the same privileged. The libel complained of is published in a book containing the Minutes of the General Medical Council, and is part of the report of the proceedings of the Council in the plaintiff's case. It is most material to bear in mind, that it is admitted that the report is truthful, accurate and honest, published *bonâ fide* without malice—not an *ex parte* report, but a report of facts which have been finally ascertained and adjudicated upon. To determine whether such a report is privileged, it is important to consider the position, powers and duties of the Medical Council. The Council is not a private association. They are a public corporation, invested with large powers and privileges, and charged with important duties—duties in which not only the profession but the public at large are interested. They are authorized to hold quasi-judicial inquiries—inquiries involving the status and character of professional persons, members of their own body, involving the rights of those persons towards the public, and the rights of the public towards them. There is no appeal from their decision, and the influence of public opinion is no small safeguard against the abuse of the powers intrusted to them. This influence cannot be exercised if they keep secret the grounds on which they act. The public are clearly interested in knowing these grounds. The preamble of the Act states, that it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners. The Council, by sect. 10, has power to appoint Registrars who are to keep correct Registers, and in every year to cause to be printed, published and sold, a correct Register, a copy of which is made evidence in all Courts. Sects. 28 and 29 give the Council power to erase names from the Register. Sects. 31 and 32 deal with the privileges of registered persons, enabling those registered to sue, and disentitling those not registered from suing for their charges. By sect. 34, "legally qualified medical practitioner" is to be construed to mean a person registered under the Act. Sect. 35 exempts registered persons from serving on juries. By sect. 36, unregistered persons

are disqualified from holding a large number of appointments. Sect. 37 declares that no certificate required from any medical practitioner shall be valid if the person signing it is not registered. These provisions show how important it is that not only the profession but the public should have accurate information as to the proceedings of the Council—should know who is on the Register, who is entitled to sue for charges, who is exempted from serving on juries, who is entitled to hold those public appointments for which medical men are eligible, and who can sign valid certificates.

Again, it is important if a person's name is erased that accurate information should be given to the public of the cause of its erasure. The medical man whose name is erased is not disqualified from practising, and old patients and other medical men invited to meet him in consultation might reasonably desire to know the nature of the offence in respect of which the erasure was made, in order to determine whether they would still continue to employ or meet him. This they could not learn from the Register itself, but could learn from the proceedings of the Council, as appearing in the book containing the report complained of. We are of opinion that the Medical Council would, in many cases, fail in discharging their social and moral duties to the public if they shrank from the responsibility of making known to the public the grounds on which they have removed a man's name from the Register, and thereby converted him from a qualified to an unqualified practitioner. Can it be said that a fair, honest, and accurate report of such proceedings is not privileged? If this had been an impartial and accurate report of a proceeding in a public Court of law, it would have been beyond all doubt privileged. The reason of this privilege is thus stated by Mr. Justice Lawrance in *The Queen* v. *Wright*, 8 T. R. 298: "The general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to private persons, whose conduct may be the subject of such proceedings." Lord Chief Justice Cockburn uses language almost identical in *Wason* v. *Walter*, 4 Q. B. 73, and Mr. Justice Willes in *Henwood* v. *Harrison*, Law Rep. 7 C. P. 622, says: "The principle upon which these cases are founded is a universal one, that public convenience is to be preferred to private interests, and that com-

munications which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice, notwithstanding that they involve relevant comments condemnatory of individuals."

It seems to us, having regard to the nature of the tribunal, the character of the report, the interest of the public in the proceedings of the Council, and the duty of the Council towards the public, that this report stands on principle in the same position as a judicial report. It would be stating the rule too broadly, in our opinion, if it was held that, to justify the publication of proceedings such as these, the proceedings must be directly judicial, or had in a Court of justice. We can find the law nowhere so broadly stated, nor do we think in these days it would be so laid down. The Court must adapt the law to the necessary condition of society, and must from time to time apply as best it can what it thinks is the good sense of rules which exist to cases which have not been positively decided to come within them. We have said that we can find no direct authority against holding this publication privileged. We do find, however, authorities which, in our opinion, favour the contention of the defendants that the rule of privilege extends to proceedings such as these. *Purcell* v. *Sowler and others* was a case decided by the Appeal Court in 1877. It was held that the administration of the poor law, both by the government department and by the local authorities, including the conduct of the medical officers, is a matter of public interest, but that the publication of a report of proceedings at a meeting of poor law guardians at which *ex parte* charges of misconduct against the medical officer of the union were made, is not privileged by the occasion. The proceedings in this case were before a board of guardians, and were clearly not judicial. They were, however, *ex parte*, and on that ground only were held not privileged.

Lord Chief Justice Cockburn, after stating that proceedings in Courts of law and proceedings in Parliament are privileged, although statements may have been made prejudicially affecting the character of private individuals, proceeds thus:—"Many intermediate cases may be put. Take the meetings of the Corporation of London. The discussion at such meetings might involve strong observations upon the conduct

of particular individuals. So, also, as to the municipal councils of other cities and boroughs; so, again, as to meetings of magistrates at quarter sessions not as Courts of justice, but for transacting the business of their county. In all these cases I should be sorry to lay down as law that the proceedings of such meetings may not be fully reported, although the character of private individuals may be inadvertently attacked. But it is unnecessary for the decision of the present case to lay down any such rule, and I wish to be understood as by no means saying that the proceedings of different bodies to whom part of the administration of the public business of the country is committed could not be matter for general discussion and publication."

In the same case Lord Justice Mellish says:—"I do not mean to say that the matter was not of such public interest as that comments would not be privileged if the facts had been ascertained." And Lord Justice Bramwell says:—"If this had been a discussion on the plaintiff's conduct, the facts not being in controversy, the matter was a subject of such general public interest as would have given a right to comment upon it, and fair and *bonâ fide* comments would have been justified." This case, to our mind, goes far to show that proceedings such as these, where the facts are ascertained and finally adjudicated upon, are privileged. *Cox* v. *Feeney*, decided in 1863, was a *nisi prius* decision, and Lord Chief Justice Cockburn spoke with approval of the dictum of Lord Chief Justice Tenterden—namely, that "a man has a right to publish, for the purpose of giving the public information, that which it is proper for the public to know," and told the jury that the publication of a matter of a public nature, and of public interest, and for public information, was privileged, provided it was published with the honest desire to afford the public information, and with no sinister motive. The present case is stronger. The report is a report of proceedings which actually took place; proceedings within the jurisdiction of the Council; a report of proceedings where the facts had been ascertained; a *bonâ fide* true report, without any sinister motive; a report of a matter of a public nature; a report of proceedings in which the public are interested, and in respect to which they are entitled to information.

New and important bodies were from time to time constituted

by the Legislature, such, for instance, as the London County Council and other County Councils throughout the country, bodies to whom the most important duties are entrusted, duties in which the community at large are interested. Is it to be said that *bonâ fide* honest and accurate report of the proceedings of these bodies is not privileged because in the course of the proceedings the character or conduct of individuals is impugned? Such a result would be most mischievous; it would impede the free action of these bodies and deprive the public of information to which, in our opinion, they are entitled. If the report had simply been a report of the fact that the plaintiff's name had been erased we cannot think it would have been contended that the report was not privileged. It is said because the nature of the offence is stated the privilege is lost. In our opinion the Council were fully justified in stating the cause of the erasure. If it had not been stated, the plaintiff might have complained that the public were left to infer that he had been convicted of felony or misdemeanour under the earlier part of sect. 29. It might have been said it was unfair to publish part of the proceedings only. Again, if they have published too much, this would not destroy the privilege; it might be evidence of express malice, but it is admitted there was no such malice. It is also said that the privilege is lost because there has been a publication to the public at large, to a class beyond those interested in the matter; but this I have disposed of, because, in our opinion, the public at large were interested in these proceedings, and their publication was information to which the public were entitled. There is an American decision, *Burrows* v. *Bell*, very similar to the present case, where it was held that the publication by a member of the Massachusetts Medical Society of a true account of the proceedings of that society in the expulsion of another member for a cause within its jurisdiction was privileged. The decision is instructive, and is entirely in accordance with the views we have expressed. In *Whiteley* v. *Adams*, Chief Justice Erle said: "Judges who have had from time to time to deal with questions as to whether the occasion justified the speaking or the writing of defamatory matter have all felt great difficulty in defining what kind of social or moral duty or what amount of interest will afford a justification, but all are clear that it is a

question for the judge to decide." This action is in truth an attempt to have the decision of the Council reviewed by another tribunal. We express no opinion on that decision. It cannot be reviewed directly, and this attempt to review it indirectly cannot succeed. We have come to the conclusion that the publication of these proceedings, being true, accurate, and *bonâ fide*, is privileged, and that the learned judge was right in holding that there was no question which he ought to leave to the jury, and in giving judgment for the defendants the appeal must be dismissed with costs.

Appeal dismissed.

JOSEPH FREDERICK LEESON.

27*th* & 28*th* *Nov.* 1889.

Minutes: Vol. XXVI. pp. 153—160. Proceedings of the Council held to be satisfactory in form and fact, by Chancery Division of Court of Appeal. Leading case on persons interested or acting as judges.

13*th* *Dec.* Minutes: Vol. XXVII. pp. 207—209. 59 Law Journal Chancery Cases (Court of Appeal), 233.

Registered as Lic. R. Coll. Surg. Edin., 1858, Lic. R. Coll. Phys. Lond., 1861. Was charged with covering Harness. Charge found to be proved, and his name was erased. Of the members of the Council who took part in the inquiry, two—Dr. Glover and Mr. Teale—were also members of the Medical Defence Union, being subscribers of 10*s.* per annum and guarantors, but neither of them a member of the Council of the Union which made and conducted the complaint.

Leeson applied to the Chancery Division of the High Court of Justice for an injunction to restrain the Council from erasing his name.

He founded his application on these grounds—

(a) That the charge meant that he covered Harness' practice as a medical electrician only.

(b) That a change in the procedure was made on the day his case was considered by altering the standing order, *i.e.*, that the Medical Defence Union conducted the prosecution instead of the Council's solicitor doing so.

(c) That matters had been placed before the Council which were not evidence.

(d) That two members of the Council were subscribers to the Medical Defence Union, and as such were biassed.

(e) That it was Harness' conduct that was attacked.

Mr. Justice North refused the application, and decided—

(a) That the charge was, plainly, that Leeson had acted as cover for Harness, not merely as a medical electrician, but as a person acting as a registered practitioner, and that he (North, J.) had no power to review the Council's decision.

(b) That the rules of procedure were only what ought to

have been made, and that the inquiry would have been conducted in the same way had the standing orders not been altered. That the change was in the power of the Council, and was not prejudicial to the accused person.

(c) That the Council could not administer oaths, and could only be guided by such evidence as they could get, whether strictly legal or not, and the proceedings were not invalidated by that cause.

(d) That the two members of the Council who subscribed to the Medical Defence Union were not so interested as to disqualify them from hearing the case.

(e) That the inquiry into Harness' conduct was necessary for the purpose of seeing what the medical practice was that the defendant was accused of covering.

This decision was appealed against by Leeson, and the appeal was heard 18th and 19th December, before Lords Justices Cotton, Bowen, and Fry.

On appeal, appellant's counsel said: Our next point is, that two members of the General Medical Council who heard the charge against the plaintiff, and joined in the decision complained of, were members of the Medical Defence Union, who acted as prosecutors in the charge. The principle is well established that a person cannot act as a prosecutor and judge in the same matter, neither can a person act as judge who has a pecuniary interest in the matter in question. The order is therefore invalid, as two of the persons who acted as judges were also in the position of prosecutors.

Everitt, Q.C., and *Muir Mackenzie* for the respondent, were only called upon on the second point. All the cases referred to on behalf of the appellant were cases where magistrates were exercising quasi-criminal jurisdiction in a judicial capacity. In the present case the proceeding before the General Medical Council was not a judicial or a quasi-judicial proceeding. The Medical Defence Union did to some extent act as prosecutors, but it was not necessary that the charge or complaint should be made by any one to the General Medical Council, who might, *mero motu*, have set the proceedings in motion. It would have been *intra vires* for the General Medical Council to have started

the proceedings, and their decision could not have then been impeached. And the decision of the General Medical Council cannot now be impeached because two of the members happen to have been subscribing members of the Medical Defence Union who presented the charge against the plaintiff. These two gentlemen, although subscribers to, and guarantors of, the Medical Defence Union, were not members of the governing body or Council who instituted the proceedings, and had no control over the action of that body, and they had no pecuniary interest in the matter. In *The Queen* v. *Allan*, one at least of the magistrates was a member of the committee which instituted the proceedings—the proceedings were of a criminal nature—and they were instituted not by a corporate body, as here, but by an incorporate body.

Cotton, L. J. This is a motion by way of appeal from Mr. Justice North, to restrain the defendants, who are the General Medical Council, from acting on the resolution at which they arrived, which was that the name of the plaintiff be struck off the Register of medical practitioners, and to prevent them from publishing that resolution.

The General Medical Council is a body which is formed under 21 & 22 Vict. c. 90, which Act was passed for the purpose of enabling persons requiring medical aid to distinguish qualified from unqualified practitioners. It is a body partly composed of medical men, who are named by certain public bodies, partly of persons elected by the general body of qualified medical men in the country, and partly of persons named by the Queen.

The Act required—and for the first time required—that there should be a Register, and those only who are entered on the Register can sue for and obtain payment of any money payable to them for medical attendance or medical fees, and then powers were given to this body by various sections, of which sect. 29 was the first and the most important one. [*His Lordship read it, and continued.*] And that was what was done in this case by the General Medical Council. There was another clause—clause 40—which I ought to refer to, because it was a good deal referred to in argument. It enabled criminal prosecutions to be taken against persons who falsely pretended to be registered practitioners, but the proceeding taken in this

case was not under the powers of that last section, because Dr. Leeson was on the Register at the time when this order was made by the General Medical Council, and was properly on the Register.

Now, there have been a good many points argued here, and the first was that the matter in respect of which the General Medical Council here adjudicated or decided was not a matter within the powers given to them under sect. 29, and for that purpose the charge made against the plaintiff, and which was brought to his notice by writing according to the practice of the General Medical Council, was referred to, and it was as follows:—"You, being a registered medical practitioner, do act as cover of, or by your presence, advice, and assistance, do enable one Cornelius Bennett Harness, an unqualified person, to carry on the business or profession of a medical electrician, and to practise as if he were duly qualified, under the style of the Medical Battery Company (Limited)," &c. I need not read more. It was said that there was nothing contained in this complaint which would justify the General Medical Council in exercising the powers given to them by sect. 29, and there was a good deal of verbal criticism ably pressed upon us as to the effect of what was said in the notice. It was said that there is no allegation that Mr. Harness is practising as if he were a duly-qualified medical man. It only says, "as if he were duly qualified, under the style of the Medical Battery Company," and that all that Dr. Leeson was supposed to have done was that he assisted him to represent himself as a medical electrician. I cannot read it in that way. We know what a duly-qualified medical man is in the Act. A person is duly qualified if he is on the Register, and in that respect duly qualified to obtain the benefit of the Act as regards the privileges which are conceded to those medical men who are on the Register, and I have no doubt that this notice does state that which would justify the General Medical Council, if they were satisfied that it was supported by the facts, in coming to the conclusion that an offence had been committed which was, in the words of the Act, "infamous conduct in any professional respect." That, in my opinion, is the true construction of the words of the charge which is made against the plaintiff. And it was found that he

had been guilty of the acts charged against him; and there was a direction to erase his name from the Register.

There has been here a good deal of question as to what took place on the inquiry, and we have had the evidence which was before the General Medical Council brought before us. In my opinion, it would be wrong to consider whether the General Medical Council arrived at a right conclusion on the evidence which was brought before them. The General Medical Council cannot, strictly speaking, take evidence. They cannot take evidence on oath. They cannot take evidence which we, as lawyers, have to consider as evidence. They have statements made before them in support of any complaint which is made, and also they have statements made on the other side by the medical man against whom the complaint is made, and if it is once established that the complaint made before them does involve a matter in respect of which they can exercise the jurisdiction given to them by sect. 29, then, I think, we ought not to look at the evidence or in any way consider whether they have arrived at a right conclusion. Of course, it was alleged and proved before us that they had acted corruptly; if it was proved that there was no statement made before them on which they could reasonably and honestly arrive at the conclusion at which they did arrive, then, I think, we ought to consider it to see whether the fact that there was no statement which could justify the conclusion was such evidence as, if not displaced, would lead us to the conclusion that the Council had not acted honestly with respect to the charge brought before them, but had acted with some other indirect object. But although there were some allegations in the affidavit of the plaintiff in this case that there was prejudice against him, that was not pressed upon us at all by counsel, nor was it any way supported by anything which was brought before us. Dr. Leeson seems to have had a most perfect consideration of his case. The complaint was brought forward in the ordinary mode required by the rules and regulations of the General Medical Council. He was there, he was represented by his solicitor, and he brought his own witnesses, that is to say, those who, with him, were to make statements in support of his contention that in his conduct he had done nothing which was infamous in a professional respect, and

everything was heard, most fully heard, and considered, and then the Council arrived at the conclusion at which they did arrive. In my opinion, that being so, we cannot consider as to whether they are right or wrong. That must be left to them.

In my opinion, therefore, the first ground which was taken in support of this application fails, because, I think, there was a charge which justified the General Medical Council in making the inquiry under sect. 29, and there was no reason for suggesting that the proceedings were improperly conducted by them.

But then there was another point raised, which occasioned rather more doubt, and which was this: It was suggested as a second point that this order, made by the General Medical Council, must be considered as made by a non-competent tribunal, for it was said that, taking the Council as acting judicially, it was so constituted on this particular occasion that any order made by it ought, having regard to the decided cases, to be considered as a nullity. Now, it appears that the complaint against Dr. Leeson—I will not call it indictment—was brought in the name of the Medical Defence Union, and it turns out, when attention is called to the matter, that two of the members of the Council, who were present when the case of Dr. Leeson was considered, were members of the Medical Defence Union, and it was said that they are to be considered in the light of prosecutors, and that as they were prosecutors they could not also sit as judges of the matter. It was therefore contended that any decision which the Council arrived at when these two members, who were incompetent to act as judges in the matter, were present must be considered as a nullity.

Of course, the rule is very plain that no man can be plaintiff or prosecutor in any action and at the same time sit in judgment to decide in that particular case, either in his own case, or in any case where he brings forward the accusation or complaint on which the order is made. To my mind, it is clear here that the General Medical Council, in respect of the complaint against Dr. Leeson, were acting judicially. They were not in the ordinary sense judges, but they had to decide judicially as to whether or not the complaint against Dr. Leeson was well founded, and they could, if they found it was well founded, make an order which would be of great importance to him, and

deprive him of being on the Register, with very serious consequences. But then we have to consider this. Were either of these two gentlemen, Mr. Teale and Dr. Glover, to be considered as complainants in this case?

In considering this, we must look a little at the Medical Defence Union. The Medical Defence Union was a company limited by guarantee under the Act of 1862, and one of the objects was "to support and protect the character and interests of medical practitioners practising in the United Kingdom," and then "to promote honorable practice, and to suppress or prosecute unauthorized practitioners." Then they are "to advise and defend, or assist in defending, members of the Union in cases where proceedings involving questions of professional principle, or otherwise, are brought against them." So that it was not only to prosecute those who offended against the Act, but to defend those against whom charges were brought unreasonably. Then if we look at the articles we find this, that there was a Council, and the Council practically had all the powers of the company which formed the Union; except in one respect, they could not institute prosecutions against any one who was acting in violation of the law without the vote of a general meeting. One of the articles is as follows: "The objects for which the Union is established shall be carried out in the manner provided by these articles, provided that the second of the objects of the Union as there set forth, so far as relates to the suppression or prosecution of unauthorized practitioners, shall not in any case be acted on without the sanction of a unanimous resolution of the Council confirmed by a majority of members present and voting at a general meeting." But we are not now considering a prosecution under the Act, and except in that respect there is no limit on the power of the Council, who can do everything which is not expressly or by Act of Parliament required to be done by the whole body. Neither Mr. Teale nor Dr. Glover were members of the Council; they were members of the Union by subscribing 10*s.* a year, and by giving a guarantee, the amount of which we do not know, which was to provide any expense which would be necessary in order to carry out the objects of the Association. The powers of the Council are referred to in article 36. [*His Lordship read it and continued.*]

Now this complaint made against Dr. Leeson was a complaint brought forward by the Council, to which neither of these two members of the General Medical Council belonged. They were not upon it, and they could not, having regard to the articles, exercise any control or give any direction as to what should be done by the Council in bringing forward this complaint. Then are they, as members, in any way interested? The expenses of this complaint could not be thrown by the General Medical Council on Dr. Leeson, the person complained of. They had no power to give any costs, and therefore, whatever might be the result of this complaint made against him, it would not in any way affect the liability of Mr. Teale and Dr. Glover to contribute anything to the expenses of this proceeding. Then, as regards the question whether they are to be considered as complainants here, we ought to look to substance, and not because this complaint is brought by the Council in the name of the Union, to say that a person, a member of a union, who has nothing to do, and can have nothing to do, with bringing forward this complaint, is to be treated as a prosecutor, or as one of the persons who is bringing forward this complaint. The term "prosecutor" is sometimes objected to, but I use it for the sake of simplicity. Therefore it cannot be said that here these two members have been incompetent to act because they were adjudicating upon a complaint brought forward by themselves, and, as I have already shown, there can be no pecuniary interest and no bias in that respect, either from any pecuniary liability which was thrown upon them, or anything of that kind. Whichever way it was determined, their liability as to contributing to the expenses would be just the same. I may also observe that, as regards the objects of the Union—I give no opinion as to whether it is desirable to form such unions—the objects are just as much to defend those who are improperly attacked as to bring before the General Medical Council any question which may reflect on the conduct of any member of the profession, so that on that ground they are not to be considered as complainants here—as persons who are bringing forward this charge; and there was hardly any contention that their position as members of the Union did actually involve a bias which would prevent them from adjudicating on this case.

Numerous cases were quoted, but, in the view which I take of it, it is only necessary to advert to one which probably is the strongest in favour of the appellant here—*The Queen* v. *Allan*. There certain gentlemen, riparian owners and owners of salmon fishing, and some who were outsiders, formed themselves into a body not in any way incorporated, all of whom apparently would have equal power, and there was a committee formed, which was a committee to direct prosecutions. Three magistrates were sitting on the bench when a question was brought before them, and they were members of this association which had been formed. One of them was a member of the committee that had directed the prosecution. There was no doubt, therefore, he was a prosecutor in the matter which was brought before the magistrates for decision, and, therefore, there could be no doubt that, having regard to the principle laid down, the conviction was bad. But the other two had nothing to do with that committee, and were only members of the association, and that was the principal point relied upon here. But Chief Justice Cockburn no doubt does use language which would seem to show that, even if only those magistrates who were members of the association and not on the committee had been on the bench, the conviction would have been bad. What he said was this: "Certain members of that association were present as justices, and took part in this conviction. They were essentially prosecutors, being members of an association the aggregate of which were undoubtedly the prosecutors." Well I myself do not think that the language of judges ought to be taken without reference to the facts of the case, and although he did use that large expression, yet Lord Blackburn, who was on the bench too, and Mr. Justice Mellor, did not use language which can be even tortured into saying that if any member of the association had been on the bench at the time that would have vitiated the proceeding. What Lord Blackburn said was this: "One of the justices who joined in the conviction, being a member of the committee of the association which instituted the proceedings, was one of the prosecutors. There may be difficulty in finding magistrates in this neighbourhood who are not interested to hear such an information, but members of the association which institute the prosecution must not act as judges upon it." There,

I think, he puts it that the conviction was bad, because one member of the committee who were actually prosecutors was sitting on the bench at the time, and Mr. Justice Mellor's language, I think, fairly interpreted, leads to the same conclusion. But even if Chief Justice Cockburn did intend by the language he used to say that the conviction would have been bad if any one of the members of the association who had nothing to do with the prosecution, and could not have, and who had not, been on the committee, that that would have vitiated the conviction, I should not follow him in a case like this, where neither Mr. Teale nor Dr. Glover had, or could have, any voice at all in this prosecution, and who on the evidence knew nothing at all about it till the matter was brought before them as members of the General Medical Council.

In my opinion, this objection, which is a most serious one, cannot prevail, and we ought to hold that Mr. Justice North was right in refusing the injunction.

Bowen, L. J.: As to the first point raised by the appeal, I shall say very little in addition to what the Lord Justice has already stated. These proceedings were in the nature of judicial proceedings, although the forum is a domestic one, and although the evidence taken before such forum differs in many respects from evidence which is adduced in a Court of law, and in particular in the all-important respect that it is not given upon oath. The only thing which the Courts can investigate, when the proceedings of the General Medical Council of this character are brought before them, is whether the domestic forum has acted honestly within its jurisdiction. The jurisdiction is defined by the statute. There must be an adjudication by the General Medical Council of infamous conduct in some professional respect, and that adjudication must be arrived at after due inquiry. The statute says nothing more; but, in saying so much, it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard. With respect to the charge made, the charge of which he has notice, it is a charge of infamous

conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. We have seen that those conditions have been fulfilled by the inquiry and by the tribunal which institutes it. The functions of the Court of law are at an end. It appears to me that we have no power to review the evidence any more than we have a power to say whether the tribunal came to the right conclusion. If indeed it could be shown that nothing was brought before the tribunal which could raise in the minds of honest persons the inference that infamous conduct had been established, that would go to show that the inquiry had not been a due inquiry; but if there is no blot of that kind upon the proceedings, the jurisdiction of the domestic tribunal, which has been clothed by the Legislature with the duty of discipline in respect of a great profession, must be left untouched by Courts of law. It appears to me for these reasons that the view which Lord Justice Cotton has expressed is the sound one, and I entirely concur with it.

Next comes a very serious question, whether or no the tribunal which adjudicated in respect of the appellant's conduct was, in respect of two of its members, rendered incompetent by the fact that they had taken part as accusers before the Council of the person upon whose conduct they were adjudicating. As the Lord Justice has said, nothing can be clearer than the principle of law, that the person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial judge. If he is an accuser, he must not be a judge. If he has a pecuniary interest in the success of the accusation, he must not be a judge. Where such a pecuniary interest exists, the law does not allow any further inquiry as to whether or not the mind was actually biassed by the pecuniary interest. The fact is established from which the inference is drawn that he is interested in the decision, and he cannot act as a judge; but it must be in all cases a question of substance and of fact whether one of the judges has in truth also been an accuser. The question which has to be

answered by the tribunal which has to decide—the legal tribunal before which the controversy is waged—must be: Has the judge whose impartiality is impugned taken any part whatever in the prosecution, either by himself or by his agents? I think it is to be regretted that these two gentlemen, as soon as they found that the person who was accused was a person against whom a complaint was being alleged by the Council of a society to which they subscribed, and to which they in law belonged as members, did not at once retire from the Council. I think it is to be regretted, because judges, like Cæsar's wife, should be above suspicion, and in the minds of strangers the position which they occupied upon the Council was one which required explanation. Whatever may be the result of this litigation, I trust that in future the General Medical Council will think it reasonable advice that those who sit on these inquiries should cease to occupy a position of subscribers to a society which brings them before the Council. But having said that, I come back to the point which we have to decide, whether these two gentlemen took any part whatever in the prosecution, either by themselves or by their agents. It appears to me, in spite of the cloud which the ingenuity of the appellant's counsel raised upon the point, that the true answer must be here upon the facts—and it is a question of fact—in the negative. I think, although they were members of the corporation whose Council did bring this complaint before the General Medical Council, they did not themselves take any part, and could not have taken any part, whatever in the prosecution, and that the prosecution was not conducted really by the Council of the Union as their agents. The Council of the Union was supreme in the matter, and I think that they stand clear, upon the facts being investigated, of all suspicion whatsoever.

For those reasons, treating the latter part of the case as one which depends upon an inference of fact, and regretting, as I do, that there should be colour for the suggestion that has been made, and that a controversy should accordingly have arisen which required to be carefully considered—with the care which we have brought to bear upon it, nevertheless I think that, as a matter of substance and of fact, these gentlemen were not accusers on this particular occasion.

The appeal, therefore, in my judgment, must be dismissed with costs.

FRY, L. J. Two questions have been argued before us. The first was a question whether the charge which was laid before the General Medical Council was one which was within the jurisdiction of that Council. Now, with all that has been said by my learned brothers on that part of the case I entirely concur. I shall add nothing to what they have so fully and clearly expressed.

Then comes the second question—whether, having regard to the fact that two members of the Council were subscribers to what is known as the Medical Defence Union, the Council, as constituted, was competent or incompetent to determine the charge. Now, there again, there are two subordinate questions in which I entirely agree with my learned brethren. In the first place, I cannot for one moment yield to the argument which was addressed to us by the leading counsel for the General Medical Council, that they were not acting judicially in the performance of their duties on that occasion. The nature of the proceedings and the effect of the proceedings seem to me to be very strong to show that it must be a judicial proceeding, because the result was to deprive Dr. Leeson of rights which, before that, were vested in him as a duly-qualified medical man on the Register of the Council. Further than that, the language of the statute, if it be necessary to refer to that, is in my judgment equally clear. It requires a due inquiry. It requires a judgment. It requires that that judgment shall find him guilty. Now "inquiry," and "judgment," and "guilt," are all words which express and which are relevant to a proper form of judicial proceedings, and therefore, although this body proceeds by different rules of evidence to those on which the Courts of law proceed, I cannot for a moment doubt that the Council were proceeding judicially, nor can I help adding that the manner in which the Council has proceeded on this inquiry, as on all other inquiries, shows that the Council are fully aware that they are performing judicial duties, and endeavour evidently to perform them in a very admirable manner.

The second point is this. It was urged before us that the Medical Defence Union were not in fact complainants. It was said that the Council could proceed without any prosecutor, or person acting before it. They might proceed *mero motu*. That

is quite true; but it is equally true that in this case they did not proceed *mero motu*, but they proceeded in this manner. They allowed the solicitor and the honorary secretary of the Medical Defence Union to appear before them in the character of complainants—a course which seems to me to have been a very convenient one to pursue—and it is not unworthy of remark that, at the very same meeting of the Council at which these proceedings were taken against Dr. Leeson, rules in respect of the procedure at such inquiries were passed by the Council, which divided themselves into two classes of cases. One of these classes was, where the inquiry is brought before the General Medical Council by a complainant, and the complainant appears personally, or by counsel, or by a solicitor, then a certain order of procedure was enacted, and that order of procedure followed very nearly the procedure before a Court. It gave the complainant an opportunity to state his case, then produce his proofs; then the accused was to be invited to state his case, and to produce his proofs, and then there was an opportunity given for a reply in certain cases. The second class of cases was, where no complainant appeared. There the Council proceeded simply by reading the complaint, and calling on the accused practitioner to state his case, and produce his evidence. It is evident, therefore, the Medical Defence Union, either as a whole or by their executive, were proceeding as complainants, and as quasi-prosecutors in this inquiry. No doubt the Medical Defence Union acts through its Council, through its executive body, and this proceeding was taken by the executive body; and they were represented, as I have already stated, by their solicitor and the honorary secretary. They acted, in fact, as prosecutors, producing the evidence and stating the case, and urging what was to be said for the prosecution, or quasi-prosecution.

Now to that Union two of the members of the General Medical Council which sat upon this case, and who therefore took part in this decision, were subscribers, and it may be taken that this prosecution—I call it a prosecution for the sake of brevity—this proceeding, was within the objects of the Union. It appears to me that subscribing to a Union of this description implies two things. It implies a general sympathy with the objects of the Union, and it implies, secondly, a confidence in the discretion of

the executive body, who have to carry on the business of that Union. No doubt the amount of confidence and the amount of sympathy may vary in different cases and from time to time with the same subscribers, but that is the natural conclusion, I think, one arrives at when one finds a person subscribing to an association for carrying on prosecutions.

Now that, in my opinion, makes the subscriber to an association of this kind what has been called a virtual prosecutor. Of course he is not an actual prosecutor; he is not before the tribunal in *propriâ personâ;* he has not even given instructions to the solicitor who appears, but he has shown his sympathy and his confidence in that body who are acting in this respect; and I cannot think that a body of subscribers to a Union of this description could form a satisfactory body of judges to determine the proceedings taken by the Union itself. Taking that view of the case, I cannot shut my eyes to the fact, which judges know as well as everybody else, that there are in this country numerous associations formed for the purpose of carrying on prosecutions in respect of alleged violations of the law of various kinds. They may be sometimes in respect of violations, or alleged violations, of rights of fishery in a river, as in the *Tees Case*, or they may be violations, or alleged violations, of the laws which restrain cruelty towards animals, or they may be violations, or alleged violations, of the ecclesiastical laws. Now, it appears to me, that subscribers to those associations indicate their sympathy with the general proceedings of the body in carrying on those prosecutions, and I think they come within the description which has been laid down of virtual prosecutors.

To my mind this point is determined by authority. I do not say authority binding on us, but authority which I think deserves the utmost respect and consideration—I mean the case, to which Lord Justice Cotton has referred, of *The Queen* v. *Allan*. In that case there was a voluntary association of persons which consisted of two classes—ordinary members, who were the owners of river-side property or occupiers of the rights of fishing in the Tees and its tributaries; secondly, honorary members, who might be desirous of promoting the objects of the association by contributing to its funds, and who were, as I understand, not riparian proprietors or owners of rights of fishing in the Tees. That body

acted, as most of these bodies do, through a committee, and that committee was not only to make bye-laws, and rules and regulations, but they were the persons to engage and dismiss watchers, and in the event of proceedings under the Act being considered necessary, they—that is, the committee—were to instruct the secretary to enforce its provisions, and the secretary and treasurer were, subject to the approval of the committee, to determine what proceedings should be taken against any person acting in contravention of the law. The ordinary members, therefore, and the honorary members, had nothing whatever to do with instituting the prosecutions or appointing watchers. The person who laid the information in that case was a watcher of the association, therefore engaged and liable to dismissal not by the general body but by the committee. The magistrates who sat on the bench to hear that complaint were three. Mr. Allan was an ordinary member, and the owner of property having a frontage to the river. Mr. Smith was not only an ordinary member, but he was an active member of the committee, and had been concerned in a resolution which authorized the committee to take proceedings for the recovery of such penalties as, in their opinion, had been incurred at the defendant's locks, and lastly, Mr. Rease, who was not an ordinary member, but only a subscribing member of the association. Those were the three justices.

Now, in what way did the Court deal with the application to quash the conviction on the ground of the magistrates being the virtual prosecutors? The Chief Justice Cockburn said: "It is impossible to hold, consistently with the principles which have been established by decided cases, and are founded upon the very essence of justice, that these magistrates were competent judges upon the occasion in question." Observe, he does not hold that one magistrate is disqualified, but he holds that all three were disqualified according to the essential principles of justice. "An information was laid against the defendant for the violation of the provisions of an Act of Parliament passed for the protection of salmon fisheries." Then he said: "Certain members of that association were present as justices"—again dealing with them all individually—"and took part in this conviction; they were essentially prosecutors, being members of an association the aggregate of which were undoubtedly the prosecutors." Then

Lord Blackburn—Mr. Justice Blackburn as he then was—in my view, notwithstanding what has been said by Lord Justice Cotton, took the same view. He deals, no doubt, in the first place, with the case of Mr. Smith, who was a member of the committee; but he goes on to add this: "There may be difficulty in finding magistrates in this neighbourhood who are not interested to hear such an information, but members of the association which institutes the prosecution must not act as judges upon it." In other words, he says neither an ordinary nor an honorary member of this association can act as judge upon the matter. Every subscriber to that association appears to me, in the view of these two learned judges, disqualified from sitting as judge or acting as judge on that complaint.

I think, therefore, that is a decision which, in point of substance and principle, applies to the present case. Of course it is not binding upon us, but in my view that decision is right, and I think it ought to be upheld and applied to the present case. I think it is a matter of public policy, so far as is possible, that judicial proceedings should not only be free from actual bias and prejudice of the judges, but that they should be free from the suspicion of bias or prejudice, and I do not think that subscribers to associations for the purpose of carrying on prosecutions can be said to be free from suspicion of bias or prejudice in the cases of prosecutions instituted by the associations to which they subscribe. It is needless for me to disclaim any intention, in arriving at that conclusion, of holding that the two gentlemen in question were liable to any bias. That appears to me a point which is not really open to us, because I put my decision on the ground of public policy, and I disclaim any right to inquire whether in fact they were, or they were not, biassed. I need hardly say that I do not believe they were.

Lastly, it was urged that the case I have referred to is not in point, because there the association was not an incorporated one, and in the present case it was incorporated. That, in my judgment, has nothing to do with the case. Corporation or non-corporation is quite immaterial in considering the operation upon the mind of being a member of a Union for the purpose of carrying on prosecutions. I think, therefore, that we should be misled by a trivial and immaterial difference if we gave any effect to

that. If the matter, therefore, rested with me, I should have held that the decision of the General Medical Council in this case was invalid, and that the Council, as constituted on the occasion in question, was not competent to decide on it, and in so doing, I think that I should best maintain the dignity, and therefore the usefulness, of the General Medical Council. My learned brethren are of the opposite opinion, and therefore this Appeal will be dismissed with costs.

EDWIN LAMBERT SAMUEL SMITH.

REGINA *v.* BAKER AND OTHERS (Justices of Aston, Birmingham).

Times, 4*th Dec.* 1891.

SMITH was registered as Lic. Soc. Apoth., London. He described himself as M.D., physician, and as "duly registered." His defence was that he was a Licentiate of the Beach Institute of Indianapolis. The magistrates convicted. A rule was obtained for a certiorari to quash conviction.

A practitioner on the Register by any particular qualifications is not entitled to assume any title implying a qualification which he does not possess, *e.g.*, a Licentiate of the College of Physicians, who is on the Register by that qualification, cannot assume "M.D." or call himself "Surgeon," unless he possesses those qualifications.

The rule was argued before Lord Coleridge, C. J., and Mr. Justice Wright, on the ground that appellant, being on the Register by one qualification, could assume any titles he chose without committing an offence under sect. 40.

The Court upheld the conviction.

Lord COLERIDGE, in giving judgment, said: In this case it appeared that the defendant had in many cases given certificates or other documents in which he signed his name, adding M.D. or physician, and in some cases "duly registered" under the Act, and he claims a right to use that description. He had been licensed by the Apothecaries' Company, which would make him legally an apothecary, and he was registered as such. He, however, did not sign the documents as an apothecary or as a Licentiate of the Society of Apothecaries, but as M.D. or physician. He was in possession, he said, of a diploma or degree obtained from some institution in Indianapolis, in the state of Indiana, but not from one of the colleges or universities mentioned in the Act as entitled to give such degree or diploma. In short, he had only an American degree, and he was a licentiate of the Apothecaries' Company with an American degree. And being so, he had signed documents as M.D. or physician, sometimes also adding "registered under the Act." That being so, had he violated the Act and incurred the penalty? He is clearly not an M.D. within the meaning of the Act. He may be an M.D. in America, but he is not so by diploma or degree of any of the bodies mentioned in the Act. And the penalty is incurred under the Act by "any person who shall wilfully and falsely pretend to be or use the name or title of a physician or M.D." Now it is obvious that this gentleman has claimed to be an M.D., and has put those letters after his name,

sometimes adding "registered under the Act." And, looking at his signature with those letters added, and the statement that he is registered under the Act, any one would understand that he is registered as M.D. or physician, when in fact he is not. The contention of his counsel was that, as he was registered, he was entitled to describe himself as anything. That is, that a man registered as one kind of practitioner may describe himself as another—though he does so untruly. I must say that I should have thought that, apart from any authority, a monstrous contention. It is obvious that the qualifications and examinations for the title of M.D. must be quite different from those required for an apothecary. It was intended by the Legislature that persons who employ a medical practitioner should know what are his qualifications and what examinations he has gone through, so that it may be known for what branch of practice he is qualified. Irrespective of authority, therefore, I should hold that the magistrates had jurisdiction to convict. But there is authority, and the authority of very eminent judges, in favour of this view of the construction of the enactment. There is the judgment of the Court of Exchequer in the case of *Ellis* v. *Kelly* (6 H. & N. 222)—a decision in 1860, and therefore upon this very Act—a decision of Chief Baron Pollock, Mr. Baron Bramwell, Mr. Baron Channell, and Mr. Baron Wilde—upon this very enactment, and Mr. Baron Bramwell said, in giving judgment:—

"The question depends on the construction of sect. 40, which is intended to protect the public from being imposed upon by persons untruly representing themselves as legally qualified medical men, and it appears to me that, on the true construction of that section, if any person wilfully and falsely calls himself M.D., he will be liable to the penalty, though he may be a member of the College of Surgeons, or a licentiate of the Apothecaries' Company, and registered as such."

It appears to me that case is in point, and that it would be impossible to find a more apposite authority. That being so, I think, both on principle and authority, the rule must be discharged.

Mr. Justice Wright agreed.

Rule discharged accordingly.

THOMAS RICHARD ALLINSON.

THOMAS RICHARD ALLINSON was charged with advertising in a manner discreditable to a professional man; the charge was found proved and name erased 28th May, 1892.

Minutes: Vol. XXIX. p. 81.

An injunction granted by Mr. Baron Pollock and Mr. Justice Williams, on an *ex parte* application to restrain the Council from publishing the erasure or acting on their decision.

June, 1894.

Injunction discharged by Justices Wright and Gainsford Bruce.

24th July. Supports *La Mert's* and *Allbutt's cases.* Procedure of Council approved by Court of Appeal, Common Law Division. *Weekly Times and Echo*, 13th Aug. 1892.

Appeal by Allinson, heard by Court of Appeal (the Master of the Rolls, Lords Justices Bowen and Kay).

Bowen, L. J., said that the Court was asked, in effect, to restrain the Council from doing that which they had a right to do. There was really no appeal from the Council's decision.

The Master of the Rolls, without calling on respondent's counsel, said that the Council had acted under their statutory powers, and there was no ground for suggesting that they had acted otherwise than *bonâ fide* and honestly in the matter.

The Court dismissed the appeal.

August. 1894. 1 Q. B. Cases, 750.

Allinson brought an action in the Queen's Bench for a mandamus to restore his name to the Register and for damages. The case was heard by Mr. Justice Collins, July, 1893. Allinson raised the following points:—1. The constitution of the Council at the hearing of the charge against him (one of the members having been till recently a member of the Medical Defence Union). 2. That his opinions on vaccination, the use of drugs, &c., were theories of medicine which had influenced the decision of the Council; and 3. That no opportunity was afforded him of answering the evidence laid before the Council.

Mr. Justice Collins was satisfied, on the evidence submitted to him, that the inquiry had been honestly and properly conducted by the Council, and dismissed the action.

Allinson appealed, and the appeal was heard by the Master of the Rolls and Lords Justices Lopes and Davey, in February, 1894.

The Master of the Rolls said: The grounds of the plaintiff's claim to an injunction are two—First, that Dr. Phillipson, one member of the Medical Council who adjudicated upon his case, was disqualified from so acting, and that that rendered the judgment not only illegal but void. Secondly, that there was no evidence upon which the Council could reasonably find that the plaintiff had been guilty of "infamous conduct in a professional respect." It is admitted that if either of those objections can be maintained the decision of the Council was illegal and void, and in either case I presume the plaintiff would be entitled to the relief which he asks. That raises the two questions—"Was, then, Dr. Phillipson, who took part in the decision of the Council, in a position which made his participation illegal as against public policy?" if he was, his participation certainly made the decision wholly void. It is said that he was incapacitated from taking part in the decision, because he was, or might be, biassed; and the first question we have to decide is, whether Mr. Justice Collins was right in holding that Dr. Phillipson was not disqualified. That he had any pecuniary interest in the result is not suggested, but it is said that he might have had a bias. We are bound to act upon the decision of this Court in *Leeson* v. *General Medical Council*. It may be that some of us—I am not one—would have preferred that that case should have been decided according to the view of Lord Justice Fry, but we are bound by the decision, and all we have to do with that case is to discover rightly what it did decide, and whether the decision embraces the present case. I think that in that case the majority of the Court decided that, where the person who has taken part in the judicial proceedings or, you might say, has sat in judgment on the case, has any pecuniary interest in the result, however small, the Court will not inquire any further whether he was really biassed or likely to be biassed. The Court will say at once it is against public policy that a person who has any monetary interest, however small, in the result of the judicial proceedings should take part in them as a judge. The Court will inquire no further and will say at once that he is disqualified. But *Leeson's Case* also decides that there are other relations to the matter of the person, who is to be one of the judges, which may incapacitate him from acting as a judge, and they held that the crucial ques-

tion is, as Bowen, L.J., said, whether in substance and in fact one of the judges has also been an accuser. What is the meaning of that? The question is to be one of substance and fact in the particular case. What is the fact which has to be decided? If his relation is such that by no possibility can he be biassed, then it seems clear that there is no objection to his acting. But the question is not whether in fact he was or was not biassed. The Court cannot inquire into that. There is something between these two propositions.

In the administration of justice, whether by a recognized legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there can be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position as that he might be suspected of being biassed. To use the language of Mellor, J., in *Reg.* v. *Allan*, it is highly desirable that justice should be administered by persons who cannot be suspected of improper motives. I think that if you take that literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one "of substance and fact," and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected—not that any perversely-minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed. I think that, for the sake of the character of the administration of justice, we ought to go as far as that, but I think that we ought not to go any further. I take that to be the rule for the application of the test laid down in *Leeson's Case*. Could, then, Dr. Phillipson be reasonably or substantially suspected of bias in this case? This depends in each case on the relation of the impugned judge to the matter upon which he has to adjudicate.

Now the relation of Dr. Phillipson to the matter was this. He had been a subscriber to, and a member of, a society called the Medical Defence Union, a society formed for the defence of the honour of the medical profession, and to protect that honour against the improper conduct of any individual member of the

profession. Dr. Phillipson had been a vice-president of the society, and by reason of his being a vice-president he was *ex officio* a member of the committee to which was intrusted the authority to complain of the conduct of any medical man, and to take proceedings in relation to it; he was only *ex officio* a member of the committee; he never, in fact, acted as a member of the committee. Moreover, before the plaintiff's case came on for hearing he had resigned his membership of the society altogether, so that if it was a good resignation he was, when the case was heard, not a subscriber; he was not a vice-president, and he was not an *ex officio* member of the committee. He had nothing to do with the matter. It was suggested by Mr. Coleridge, on behalf of the plaintiff, that although Dr. Phillipson did resign his membership, his resignation was not an accomplished fact until the end of two months after he sent it. But it seems to me that that may be technically so, yet the substance of the thing is, that he had resigned his membership. He might, perhaps, have repented before the end of two months, but he did not. His resignation dated from the time he sent it, for otherwise the two months did not begin to run. Therefore he resigned when he did resign, and he resigned so as not to act, and with the determination not to act, as a member of the committee, and he never did act again. Under these circumstances it seems to me impossible that any reasonable person should think that he was biassed, or that, in substance or in fact, he could be even suspected of bias. There is nothing upon which to found the suspicion. The first objection, therefore, falls to the ground. I do not go into instances which were given during the argument which would make the proposition absurdly large under some circumstances. I take the decision in *Leeson's Case*, and say that it must be proved to the satisfaction of the Court which is asked to interfere that, in substance, the relation of the impugned judge to the matter was such as I have described. The first ground of objection therefore fails.

As to the second ground of objection, it is admitted that if there was no evidence upon which the Council might fairly and reasonably say that the plaintiff had been guilty of "infamous conduct in a professional respect," they went beyond the jurisdiction given to them by the Act in entertaining the case or

proceeding to adjudicate upon it. If there was no such evidence, they ought to have declined to interfere. Was there, then, any evidence which justified the Council in finding the plaintiff guilty of "infamous conduct in a professional respect?" I adopt a definition which my brother Lopes has drawn up of, at any rate, one kind of conduct amounting to infamous conduct in a professional respect, viz.: "If it is shown that a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency," then it is open to the General Medical Council to say that he has been guilty of "infamous conduct in a professional respect." The question is not whether merely what the medical man has done would be an infamous thing for anyone else to do, but whether it is infamous for a medical man to do. An act done by a medical man may be "infamous," though the same act done by anyone else would not be infamous; but, on the other hand, an act which is not done "in a professional respect," does not come within this section. There may be some acts which, although they would not be infamous in any other person, yet if they are done by a medical man in relation to his profession—that is, with regard either to his patients or to his professional brethren—may be fairly considered "infamous conduct in a professional respect," and such acts would, I think, come within sect. 29. I adopt that as a good definition of, at any rate, one state of circumstances, in which the General Medical Council would be justified in finding that a medical man had been guilty of "infamous conduct in a professional respect." Was there, then, evidence in the present case of such conduct? It seems to me that this question must be solved thus: Taking the evidence that was before the General Medical Council as a whole, did it bring the plaintiff within the definition which I have read? Was the evidence, taken as a whole, reasonably capable of being treated by the Council as bringing the plaintiff within that definition of "infamous conduct in a professional respect?" I cannot doubt that it was. It seems to me that it may be fairly said that the plaintiff has endeavoured to defame his brother practitioners, and by that defamation to induce suffering people to avoid going to them for advice, and to come to himself in order that

he may obtain the remuneration or fees which otherwise he would not obtain. If, on the whole, that which he has been doing could be reasonably construed as amounting to that, it comes, in my opinion, within the definition I have read, and the Council were justified in saying that the plaintiff had been guilty of infamous conduct in a professional respect. The second ground of objection, therefore, also fails, and in my opinion the judgment of Mr. Justice Collins was right, and the appeal must be dismissed.

Lord Justice Lopes. I am of the same opinion. That an accuser must not be also a judge is in accordance with public policy and natural justice, and is a principle too well established to require any comment. A person who has a pecuniary interest in the result of an accusation cannot adjudicate on it. The inference at once arises that he is interested. But where no pecuniary interest exists or is even suggested, it is, to use the words of Lord Justice Bowen in *Leeson's Case*, "a question of substance and of fact whether one of the judges has, in truth, also been an accuser." Again, adopting the words of Lord Justice Bowen, "Has the judge, whose impartiality is impugned, taken any part whatever in the prosecution, either by himself or by his agents?" And Lord Justice Cotton said, in the same case, which is reported in 43 Chancery Division, p. 366 —I am now reading from p. 381—"Then, as regards the question whether they are to be considered as complainants here" (that was a case very similar to the present, the General Medical Council being concerned in it and also the Medical Defence Union), "we ought to look to substance, and not, because this complaint is brought by the Council in the name of the Union, to say that a person, or member of a Union, who has nothing to do, and can have nothing to do, with bringing forward this complaint, is to be treated as a prosecutor or as one of the persons who is bringing forward this complaint." These words are very applicable to the present case, and the result which I deduce from that case is, that in such cases the proper question to be asked is this:—Whether there is any reasonable—any real or substantial—ground for suspecting bias. Now, let me apply that to the present case. Was there any reasonable ground, in substance and in fact, for suspecting any bias in Dr. Phillipson?

He was a subscriber to the Medical Defence Union. He had been a vice-president, and, as vice-president, he was *ex officio* a member of the committee, which, on behalf of the Union, instituted complaints such as the present. He never acted on that committee, and at the time that this inquiry took place, he had resigned his membership of the Union. It was urged that his resignation did not take effect, or was not completed, for a period of two months. But I think that in effect he had resigned his membership. It must also be recollected that the evidence shows that he had never heard of the plaintiff's case before the inquiry. In these circumstances I think the learned judge was quite right in coming to the conclusion that there was no reasonable ground, in substance or in fact, for suspecting any bias in Dr. Phillipson. If that is so, the first objection taken by Mr. Coleridge fails.

Then I come to the question of "infamous conduct in a professional respect;" and in my opinion, if there was any evidence on which the Council could reasonably have come to the conclusion to which they did come, their decision is final. If, on the other hand, there was no evidence upon which they could reasonably arrive at that conclusion, then their decision can be reviewed by this Court. It is important to consider what is meant by "infamous conduct in a professional respect." The Master of the Rolls has adopted a definition which, with his assistance and that of my brother Davey, I prepared. I will read it again. "If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency," then it is open to the General Medical Council to say that he has been guilty of "infamous conduct in a professional respect." That is, at any rate, evidence of "infamous conduct" sufficient for the purpose of the present case. Assuming it to be a definition of "infamous conduct" sufficient for the purpose of the present case, was there any evidence before the Medical Council which justified them in coming to the conclusion that the plaintiff had been guilty of infamous conduct in a professional respect within that definition? It appears to me that there was abundant evidence upon which they might find as they did. A very large number of advertisements have been brought

to our notice which can only lead, I think, to one conclusion, viz., that the plaintiff was doing all he could to deter the public from consulting medical men — his professional brethren — to induce the public to distrust them and their remedies, and to come to him, holding himself out as the person who could give them that relief and that assistance which they desired. In my opinion, if that were the whole of the case, it would be amply sufficient to justify the action of the Council.

But there is another matter to which the Master of the Rolls has not alluded, namely, the plaintiff's conduct with regard to the pamphlet on vaccination. It appears to me that his conduct in that matter comes distinctly within the definition which I have given. The facts, shortly stated, are these: In 1887 or 1888 he published a pamphlet against vaccination which met with great disapproval, and he promised to withdraw it, and, so far as he was concerned, it appears that he did withdraw it from circulation. But it had passed from his hands into those of the Anti-Vaccination Society, and he, knowing that, advises his patients to consult that society, being perfectly well aware what advice they would get; namely, to adopt a method of effacing the effects of vaccination. In fact, he was indirectly advising those who consulted him to violate the law by which the Legislature had thought it desirable to enforce vaccination. On both these grounds I think there was ample evidence to justify the Council in coming to the conclusion that plaintiff had been guilty of "infamous conduct in a professional respect."

Lord Justice Davey. Nothing can be more important than to maintain intact the principle that a man shall not be a judge in his own cause, and to preserve every tribunal which has to adjudicate upon the rights, or status, or property of any of her Majesty's subjects from any suspicion of partiality. Speaking for myself, if I were at liberty to discuss the judgments of the Lords Justices in *Leeson's Case*, I confess that my mind would go rather with the judgment of Lord Justice Fry. It appears to me that it states a general principle easy of application to the circumstances of any particular case, whereas I find a difficulty in extracting from the judgments of Lord Justice Cotton and Lord Justice Bowen the exact principle which ought to be applied; and, moreover, they seem to me to leave too much to the in-

ferences which have to be drawn from the circumstances of the particular case, whereas it seems to me that the rule ought to be above and beyond the circumstances of any particular case—whether the facts suggest bias or not. I think the true rule is laid down by Mr. Justice Mellor in *The Queen* v. *Allan*, to which my Lord has already referred. But we are bound by the judgments of the majority of this Court in *Leeson's Case*, and I adopt them in the sense in which they have just been explained by the Master of the Rolls and Lord Justice Lopes.

Applying, then, to the best of my power, the principle which is to be evolved from those judgments, I am of opinion that there is no ground for holding that Dr. Phillipson was disqualified from taking part in the decision of the present case. I must add that, even if I were to adopt the judgment of Lord Justice Fry, or the words of Mr. Justice Mellor, in their most extreme application, I should in this case come to the conclusion that Dr. Phillipson was not disqualified. What are the facts? Dr. Phillipson was a vice-president of the Medical Union, and, as such, he was, according to the constitution of the society, a member of their Council; but he did not reside in the place at which the meetings of the Council were held, and he did not attend any of them, and it appears that he was not even aware of the prosecution of the plaintiff until after he had taken his seat as a member of the defendant Council. That shows that Dr. Phillipson was not party to, or privy to, what has been called the prosecution of the plaintiff; still he might be held disqualified if a member of the Council of the Union were, as such, disqualified. But then comes a fact to which I attach much more importance than was apparently attached to it by the learned judge in the Court below, namely, Dr. Phillipson's resignation. The inquiry into the plaintiff's conduct having been held on May 28th, Dr. Phillipson had, on May 3rd, to the best of his power, and so far as he was concerned, ceased to be a subscriber to, or a member of, the Union. He had severed his connection with the Union so far as he could, and the mere fact that by their rules two months must elapse before his resignation was complete, does not seem to me to make any difference. It seems to me it would be a straining at gnats to hold that, under these circumstances, whatever rule you adopt, Dr. Phillipson was disqualified from taking part in the decision

of the plaintiff's case. On the second point I agree with the other members of the Court, that there was evidence upon which the Council might reasonably and properly infer that the plaintiff was endeavouring to discredit and defame the medical profession generally, and to shake the confidence of the public in other medical men with a view to his own pecuniary advantage. The question is not whether the plaintiff is right or wrong in his views on the subject of medicine and hygiene. He may be right, notwithstanding his differences from the majority of his professional brethren. He may be in the position of *Athanasius contra mundum*. But there are different modes of stating one's opinions and views, and a man may be actuated by different motives in enforcing his views and opinions upon the world. In the present case, the language which the plaintiff has thought fit to express his views, and the circumstances under which and the surroundings with which his advertisements were issued, coupled with the notices to which our attention has been drawn recommending his own works and his own advice, seem to me, when taken together, to be evidence from which the Medical Council might reasonably hold that his conduct was "infamous in a professional respect." I adopt the definition of Lord Justice Lopes, which has been approved by the Master of the Rolls, as at any rate a standard by which those words may be applied. There is also the plaintiff's conduct with regard to the leaflet on vaccination after he had undertaken not to publish it. I repeat, in order that there may be no mistake about it, I do not think that Mr. Coleridge was well founded in saying that, on the evidence before them, the Council must be taken to have condemned the plaintiff on the ground of his particular opinions on the subject of medicine or hygiene. We have not to say whether the Council were right or wrong in the inference which they drew. All we have to say is that there was evidence on which they might as reasonable men have come to their conclusion. In my opinion there was.

STEEL *v.* ORMSBY.

Nov. 1894.

False assumption of title M.D. (B.C.) held on the facts to be an offence under sect. 40 of Act of 1858. 10 Times Law Reports, p. 483. [Reprinted by permission of the Editor.]

STEEL was charged under the Medical Act, 1858, s. 40, with having wilfully and falsely taken the title of M.D., thereby implying that he was registered under the Medical Act of 1858. The defendant had signed certificates of death and other medical certificates, adding the letters "M.D." and "B.C.," although his name does not appear in any Register showing that he is registered under the Medical Acts, and he did not hold any diploma entitling him to be so registered. It was proved on his behalf, however, that he held a certificate, which had been given to him by a joint-stock company, awarding him the degree of M.D. (B.C.). It was also proved that the defendant had on his door-plate the words "Joseph Steel, M.D., B.C., Botanic Physician," that is, M.D. of the Botanic College—and that he had stated that he was not registered. His solicitor cited *Ellis* v. *Kelly* (30 L. J. (M. C.) 35), and contended that there was no evidence that he had infringed the Act; but the magistrates, having their attention directed to *The Queen* v. *Baker* (56 J. P. 407), found, as a fact, that the defendant had wilfully and falsely taken the title of Doctor of Medicine, thereby implying that he was registered under the Act, and they accordingly convicted him, but stated a case on which he appealed.

The Court upheld the conviction.

Mr. Justice WRIGHT said he was unable to see any ground for any doubt or difficulty whatever. The section no doubt required a statement to be made by the defendant false in fact, and known by him to be so. The magistrates had found as a fact that the defendant had wilfully and falsely described himself as M.D., or a doctor of medicine. The evidence was, that the defendant, a collier, had got a certificate from a bogus institution which pretended to give diplomas, thereby defrauding the public, and thus had set up in business as a doctor, giving certificates such as

could only be properly given by regular medical practitioners, and signing them as M.D., adding "B.C." If he had described himself in terms as "Botanical Physician," or "Doctor of a Botanical College," it might have been otherwise. But there were only the letters "B.C." following "M.D." On the whole, he thought there was evidence that the man had wilfully and falsely described himself as M.D., and thought the conviction must be upheld.

Mr. Justice Collins concurred, observing that some doubt raised by expressions of Mr. Baron Bramwell in *Ellis* v. *Kelly* had been removed by later cases. It was a question of fact. He thought that it was quite impossible to hold that there was no evidence on which the magistrates might not find as they had done in a case in which the defendant had signed medical certificates which could only lawfully be given by regular medical practitioners, signing himself "M.D.," and having no diploma or degree, but only some certificate given by some "bogus" institution.

Appeal accordingly dismissed.

In 1895, ALLINSON was convicted by the magistrate in London, and fined under sect. 40 of the Medical Act of 1858, for using the qualification L.R.C.P., Edin., after he had been deprived of that qualification by the Royal College of Physicians, Edinburgh; and in January, 1896, ALLBUTT was convicted at Leeds of using titles implying that he was registered, he, too, having been deprived of his qualifications by the licensing bodies that originally granted them. These prosecutions were conducted by the Council.

In 1895, 1896, one JOHN FERDINAND was convicted under sect. 40 of the 1858 Act, by Mr. Sheil, in London. He called himself "doctor," and appended M.D., U.S.A., to his name; he also stated he was qualified. On appeal to the County of London Sessions, January, 1896, the conviction was upheld. The conviction was obtained by the Medical Defence Union. *The Times, 13th Jan. 1896.*

A person who assumed the name of DR. BELL was prosecuted by the Council, and was convicted by the magistrate in London of an offence under sect. 40 of the 1858 Act. 1896.

The only other legal action in which the Council have been engaged is the action taken by the Royal College of Physicians, London, in consequence of the Council having refused to recognize the power of the College to grant diplomas or licences in surgery. This case only turned upon the meaning of words used in a statute of Henry VIII., and presents no special ground of interest for the Medical Council beyond the fact that it confirms the privileges claimed by the College. It has not, therefore, been reported here.